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# Law and Its Order

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LOYOLA UNIVERSITY CHICAGO

LAW AND ITS ORDER:  
THE PRIORITY OF ETHICS OVER LEGISLATION  
IN PLATO'S LAWS.

A THESIS SUBMITTED TO  
THE FACULTY OF THE GRADUATE SCHOOL  
IN CANDIDACY FOR THE DEGREE OF  
MASTER OF ARTS

PROGRAM IN PHILOSOPHY

BY  
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CHICAGO, IL  
MAY 2010

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## TABLE OF CONTENTS

LAW AND ITS ORDER .....	1
Introduction .....	1
The Constitution of the <i>Laws</i> .....	5
The Priority of Ethics over Laws .....	22
The Role of the Legislator in the Creation of Ethical Standards: Education of the Children.....	33
Standards of Virtuous Education: Education of the Adults .....	53
Anti-ethical Standards:Theatrocracy.....	66
BIBLIOGRAPHY .....	71
VITA.....	72

## LAW AND ITS ORDER

### Introduction

This essay is the beginning of a work yet to be completed. An exhaustive study of Plato's *Laws* and of its connection with the rest of the Platonic corpus is an undertaking that requires a great deal of time; for that reason it will be the focus of my doctoral thesis.<sup>1</sup> For the present moment, I decide to concentrate on a specific yet fundamental problem of the *Laws*, namely the social and ethical structure that allows the law to exist in the state. Specifically, in what follows I will discuss Plato's thesis of a priority of ethics over legislation, in politics as well as at the philosophical level, and I will describe the philosophical structure of this ethical system in its relation to the legal sphere.

Despite the fact that the *Laws* are almost twenty four hundred years old, their reserve of philosophically and politically interesting points is still copious and relevant for the contemporary reader. Among the many themes that sparked my interest, three are particularly relevant for the present work. The first concerns the nature of law; in spite of the many, and often painfully detailed, laws posited by the Athenian in the course of books VIII-XII, the *Laws* offer an interesting analysis of the nature of law, one that may

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<sup>1</sup> I must warn the reader that crucial Platonic texts, such as the *Timaeus*, will not be taken in consideration in this essay, even though their relevance for the subjects discussed in the *Laws* is undeniable. Also, other ancient sources, such as the *Epinomis* by Philip of Opus, are let aside and others, such as the *Republic* or Aristotle's *Politics*, are cited, but I do not engage in detail comparisons of those texts and the *Laws*. Finally, I must also say that, in order to remain focused on the main topic of this essay, I do not discuss the illustrious commentaries to Platonic political philosophy of the American (e.g. Leo Strauss) or European (e.g. Karl Popper) tradition.

be subsumed under the label ‘Natural Law Theory.’<sup>2</sup> There are two main points of this analysis: the first discusses a dependency of the legislative system on the ethical sphere and it is the focus of this essay; the second examines an analogical connection between the positive laws of a state and the astronomical laws of the cosmos, which are ultimately a matter of theology. Even though this second point is not the focus of this work, I must here acknowledge the surprising claim that supports it. According to the *Laws*, there is no definitive and secure grounding of human legislation since legislation depends on customs and ethical norms which, in turn, may vary in space and time; the only way in which legal precepts may be ultimately legitimated is through their analogical relationship with theological law.<sup>3</sup> To express the same with a catchphrase we may say that laws have no coercive power, unless they are god given. A second interesting insight of Platonic political thought in the *Laws* relates to the first. The dependency of the legislative system on the ethical order allows for the possibility of existence of a community, even a national community, which is not bound by laws, but is kept together

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<sup>2</sup> Plato is generally considered to be a natural law theorist *ante litteram* (see for instance Maguire, J-P. *Plato's Theory of Natural Law*. In *Yale Classical Studies* 10 (1947): 151-178), but a final word on this claim may not be said before a thorough confrontation between books I-IV and book X of the *Laws*. In the first four books, human laws are presented as the product of codified ethical norms, whereas in book X they are related to divine law. A final argument that could reconcile these two claims would answer the question whether Plato's legal philosophy is prodromal with respect to natural law theory.

<sup>3</sup> The relation between human and divine law is justified in the *Laws* only on the basis of analogy. In book X, the book in which such relation is treated, Plato does not speak of a direct causal relation between divine and human law-giving power, he only suggests that they are analogous on the basis of the fact that both are products of a soul (896d-97e), respectively a divine soul and a human soul. It must be noted, however, that a genetic relation between cosmic law and human law may be argued favorably on the basis of other passages from the *Laws* (see 715e, 716a for divine participation in legal human affairs; see 714a, 875c-d, 957c for the divine power in human reason), but a final decision on a correct interpretation is beyond the scope of this paper.

by shared ethical practices and customs: a purely ethical community.<sup>4</sup> Thirdly, the *Laws* address the political value of education and art to a degree that is rarely approximated in Plato's opera.<sup>5</sup> Given the prevalence of ethics over legislation, education in all its forms, that is, in every way it may create and influence public opinion, has to be considered as the fundamental means of political action. This insight is of particular interest for today's reader of the *Laws*, as it offers an analysis of the political value of art that can help deciphering social dynamics in contemporary societies.<sup>6</sup>

The essay is divided in five sections, beginning with the relationship of the sphere of ethics and that of legislation and ending with the political relevance of theatrical production. In the first section, I discuss the dependency of the legal system on ethics by

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<sup>4</sup> This ethical community is different from Kant's and, in a certain sense, more radically ethical. In the first place we must notice that for Kant the ethical community is something that we may only hope for, since one member of the community has no assurance that every other member will behave ethically, whereas in the *Laws* such community is the result of education and knowledge. Secondly, in the *Laws* the problem of an ethical natural state is bypassed, since there is ethics only in community and an ethical state of nature modeled on the political state of nature à la Hobbes is only an abstraction. Thirdly, for Kant the ethical community is exempt from the limits of the national communities and may be realized only when all finite rational beings participate in it, whereas in the *Laws* the ethical community may be realized by the sole citizens of Magnesia and therefore may be circumscribed to a definite number of people. Finally the ethical community of the *Laws* needs no coercive power for its realization in the form of universal moral laws or in the presence of a divine legislator.

<sup>5</sup> Even though in the *Politeia* education is highly valued, only the class of the guardians is to be educated (see books II, III and VII), therefore it has a political in a narrow sense (it aims at creating a class of rulers). In the *Laws* education, especially moral education, is conceived for the development of the whole citizenry, for this reason we may say that it has a political function in a wide sense (it is the most important ingredient for the welfare of the political body itself). With regards to art we must acknowledge that in the *Politeia* it is considered for the most part negatively (book III and X), whereas, in the *Laws*, poetry and theatrical art are not only means to educate citizens, but they also generate important social dynamics that decide of the integrity of the *polis*.

<sup>6</sup> This is not to say that Nietzsche's, Benjamin's or Debord's analysis of the role of art for society are secondary with respect to Plato's. However, one must consider seriously the possibility that a philosophical text which from ancient Greece can still be helpful in considering, for instance, the institutionalized artistic proliferation in the totalitarian regimes of the twentieth century, not only allows us to understand the connection between a prolific publishing sector and the social revolutions that swept the western world between 1968 and 1978, but it also offers a critical tool to decipher the dynamics of today's televised and interconnected society.

showing how the ethical principle of measure and proportional equality is at the basis of the process of election of Magnesian magistrates. This process grants freedom and wisdom in the state which, in turn, yields *philia* and political cohesion. In the second section, the prevalence of ethics over law is discussed and proved from two perspectives: in the first place, a look at the genesis of law will show that its origin is to be discovered in the ethical sphere; secondly, observing the laws of the state, it will be discovered that the ethical sphere sustains the legal system even when the codes are approved and recognized by the body politic. In the third section, I discuss the means by which a lawgiver assures a continuity between the ethical and the legal system of the *polis*; I focus on the role that the education of children plays in Magnesian politics and on the philosophical understanding of pleasure that lies at its basis. Education will be shown to concentrate, in the first place, on the redirection of the young Magnesians' natural intuition of pleasure and pain. In the fourth part, I discuss the continuous moral education which the whole citizenry of Magnesia undergoes. Firstly, Magnesians are educated by legal norms, through the institution of preludes, that is explanations, to the laws; secondly, they are educated by the institution of public festivities. In connection with the latter case, I discuss the features of the chorus of the elderly which crowns Magnesian public festivals, and I show how a conception of pleasure based on intellectual education is at the basis of the choral function. In the last section of the essay, I show how the afore-mentioned conception of pleasure does not apply to what Plato calls 'theatrocracy' and how, for this very reason, teatrocracy is bound to be anti-ethical.



## **The Constitution of the *Laws***

What does the term “constitution” mean, when referred to a state? And what is the relationship between a legal constitution and posited law in general? We may define, provisionally and in general, a political constitution as a body of fundamental principles according to which a state is to be governed. Successively, these principles will function as guidelines for positing laws meant to regulate the life of the state and that of its citizens in specific instances. However, the principles established by the constitution are themselves laws, namely constitutional laws. To summarize then, a political constitution is in a certain sense the genetic code of the state and this code is a legal code, is made up of laws. The laws of the constitution will then be the parameter for a secondary set of laws.<sup>7</sup>

Constitutional law then is divided in subcategories; there are laws instituting the principles that inspired the constitutional documents – the preamble to the constitution – there are laws that institute the different offices and branches governing the state<sup>8</sup> and there are laws which define the different powers, limits and modalities of action of these offices. As a result of the creation and the arrangement of offices, we obtain the form of a constitution: democratic, socialist, monarchical, etc. However, it is usually the constitutional preamble that sets the tone for the creation of the offices and the character

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<sup>7</sup> Which in their turn are subdivided into specific categories; civil law, criminal law, tort law, economic law, etc. For a reference to the constitution as the parameter of the laws posited subsequently see, for instance, Article VI, clause 2 of the Constitution of the United states.

<sup>8</sup> In the majority of contemporary Western states and federations of states these branches are the legislative, judicial and executive.

of the regime to be inaugurated.<sup>9</sup> In a certain sense, we may claim that the preamble to the constitution is the foundation of the constitutional offices and laws, just as those are the foundation for the laws that are enacted thereon. However, the constitutional preamble is not a law; insofar as it is part of the constitution, it is incorporated in the constitutional code, but, usually, it does not have coercive character, rather it declares the spirit that inspires the constitution, its *ēthos*, its disposition or character<sup>10</sup>.

The considerations which inform contemporary conceptions about constitution were not news to Plato. In the *Laws*, Plato establishes a hierarchy of the legal constitution of a state where, as above, the positive legal code depends on the constitutional code and on the offices established by the constitution, which, in their turn, depend on the spirit of the constitution summarized by the preamble. The difference with contemporary conceptions of the constitution is that Plato not only stresses the importance of the *ēthos* of a constitution<sup>11</sup> with regards to the legislative system in general and with concern to the constitutional laws, but that the *ēthos* of the constitution stems directly from a

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<sup>9</sup> A constitution's preamble beginning with "We the people of the United States" will most likely introduce a federal democracy; one beginning with "L'Italia è una repubblica democratica," a democratic republic; one that states, "After waging hard, protracted and tortuous struggles, armed and otherwise, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucrat capitalism, won the great victory of the new-democratic revolution and founded the People's Republic of China. Thereupon the Chinese people took state power into their own hands and became masters of the country," a communist republic. The preamble in a constitution is usually very important but rather brief, the one to the People's Republic of China seems to be an exception. The constitution of the United States presents a similarly exceptional case if one considers the Declaration of Independence its preamble.

<sup>10</sup> Thomas Aquinas states clearly in his definition of law ( *Treatise on Law* question 90 article 1 and 4) that proper law is an ordinance, it binds those subjected to it coercively. Heinrich Rommen (*The Natural Law*, 183) elaborates on Aquinas' definition of law and distinguishes it from ethics in the following sense: even though law and ethics belong together, when one inquires from the perspective of philosophy of law, ethics has only directive power, whereas law has coercive power.

<sup>11</sup> With the *ēthos* of a constitution I mean here nothing more than the spirit summarized in its preamble. *Ēthos*, here, must be understood in the general sense of character and not in the technical ethical sense in which is used by Plato (see *Leg.* 792e) and Aristotle (*NE*, II, 1103a11).

properly ethical reflection. In other words, the constitution planned by Plato in the *Laws* is not only meant to function, that is to organize and put in place a legislative machine that works, but it is meant to embody given ethical precepts. The laws of a state and its constitution depend on the ethical precepts from which the constitution originates, to the point that the stability of the laws and of the constitution may be undermined or saved<sup>12</sup> by such an ethical foundation.

Let us now see in detail how Plato establishes the hierarchical constitution of the laws on the *politeia* and what are the nature and the function of the ethical system upon which the laws and the constitution of the state rest. We will discuss, on the one hand, the arguments of the Athenian Stranger, the motives and the goals that animate them, while, on the other hand, we will highlight the insights in political philosophy and political theory on which such arguments are based.

The Athenian Stranger speaks of the hierarchy of constitutional preamble, constitutional laws and constitutional offices in this fashion.

After the prelude must necessarily follow the tune [the law, *nomon*]<sup>13</sup> – or rather to be strictly accurate, a sketch of the State-organization [*nomous politeias*]

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<sup>12</sup> For a reference to the saving power of ethics for the constitution and the legislative system, see *Leg.* IV 713e 6-714a 8, VII 793a 9-c5. The term *soteria* comes is used in the grounding of the ethical foundation of the laws in cosmology (*Leg.* X 903b 4-7 and in a negative sense, as salvation from those who pervert the ethical system 908a 1-3) and in regards to the institution of the nocturnal council as the body that oversees the general welfare of the legal system and the constitution and, therefore, of its ethical and cosmological foundation (*Leg.* XII 961c 7-d 6).

<sup>13</sup> For a discussion about the significance of the preludes of the laws and the linguistic pun on *nomos* (musical tune, but also law) see part four of this essay. I omit here a long quotation in which the Athenian discusses the fabric of society on which political organization rests. Aristotle (*Pol.* II vi 1265b 18 – ff.) criticized this passage maintaining that Plato lacks a sufficient degree of clarity in the selection of the magistrates appointed to office from the general population. Aristotle is correct, Plato does not make a clear cut distinction between those who are to be elected and those who are not fitted for becoming *archontes*, but he does point out a criterion for the selection of the officials: these are people who do have more than a small education (*Leg.* V 735a 2-4; VI 751c 4-d 5). If we then look at the central role of education in the *Laws* we have a decent picture of the people whom Plato imagines to hold office in the regime discussed here.

*upographēn*] .... For of the State organization [*politeias*] there are two divisions [*eide*], of which one is the appointment of individuals to office, the other the assignment of laws to the offices (*Leg.* V 734e2 –35a 7).

The preludes to the law to which the Athenian refers are books I-IV of the *Laws*;<sup>14</sup> these preludes are equivalent to the preambles of contemporary constitutions. The Athenian also individuates two forms of the constitutional legislation, the institution of offices and the laws which define powers, limits and modalities of action of these offices.<sup>15</sup> The institution of specific legislation is left to posterity, to those who will live under the constitution outlined by the Athenian and will institute laws which are in agreement with the spirit of such constitution;<sup>16</sup> in this sense we see the modernity of Plato's constitutional thought. Before we analyze how the constitution and its laws depend on ethics, let us spend a few words on the offices and the norms established by the constitution proposed by the Athenian stranger.

Our analysis of the offices is not meant to prove whether or not the institutions proposed in the *Laws* would be a viable and functional possibility for an actual state,<sup>17</sup> but rather is meant to understand what kind of constitution, and along with it, what kind of regime, the Athenian proposes for the colony of Magnesia. As Glenn Morrow recognizes:

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<sup>14</sup> At the end of book III Kleinias, the Cretan, reveals to his companions that he has been assigned the foundation of a new Cretan colony. From book V to VIII they will be discussing the constitutional model of the city and from book VIII through XII a model for the city's legislative system. Books I-IV can be seen, in the general economy of the *Laws* are an introduction (a prelude) to the themes in the following books.

<sup>15</sup> See also VI 751a 1-b 1.

<sup>16</sup> See VI 769d 1- e2 and 772b 5 – d4. This latter passage refers also to amendments to the constitution.

<sup>17</sup> Morrow undertakes this task and produces an excellent analysis, not only including the functioning of the constitutional offices, but also the viability, legal and even financial, of the institution proposed by Plato in the *Laws*. See especially chapter V of his *Plato's Cretan City*.

“[a]ssembly, council, and annually elected magistrates ... were the usual organs of government in the Greek cities of Plato’s time, even in those that had not followed, like Athens, the path toward democracy” (157). We find these same constitutional institutions in the *Laws*, with the addition of a special body of magistrates, the *nomophylakes*, who resemble the old Athenian Areopagus<sup>18</sup> and who would have under certain respects, as their name points out, the same function that a body such as the U. S. Supreme Court or the Italian *Corte Costituzionale* have for contemporary democracies; they must assure that public officials, their actions, and new laws comply with the constitution.

To render a very incomplete sketch of the organization of the public offices as proposed by the Athenian Stranger<sup>19</sup> we may say that the body of citizens, the *ekklesia*, elects the *boulē*, the council, and the *nomophylakes*, from which is selected the magistrate who oversees education. The army’s officials are elected by the militia and the priests are elected by lot. Let us look at these institutions in more detail, with a particular emphasis on the respective electoral procedures. The analysis of the electoral methods described by the Athenian will lead us to an insight of the nature of the constitution of Magnesia.

Let us begin by noticing that the Athenian Stranger proposes three procedures for election: (1) the election as practiced in the majority of contemporary democracies, by which the electoral body votes for several candidates; (2) the election by lot; (3) and a

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<sup>18</sup> See Morrow, 211-13.

<sup>19</sup> As Morrow notices it is rather hard to extract from the text of the *Laws* an orderly scheme of the different offices and their relationship, since while the Athenian Stranger claims, and as we have seen, that he has in mind to discuss the different offices and their function according to law, in fact “the laws that follow are arranged not according to offices, but according to interests that need to be regulated, or activities that are to be controlled” (Morrow, 233).

mixed election, which begins with a ballot and ends with an election by lot.<sup>20</sup> The electoral process conducted by lot was a defining feature of democracy in general and of Athenian democracy specifically for the election of the *boulē*, which possessed much power in the legislative, executive and, most importantly, judicial branch. The election by lot was designed in order to preserve the power of the people and impede the formation of factional groups around a leader. This method had its objectors, who made their case by means of the following argument: since political office is not only the concern of every citizen in the interest of the *demos*, but on it depends the welfare of the whole state, the risk could not be run that the lot would randomly assign incompetent people to office.<sup>21</sup> On the other hand, the election by vote of preference was a device to ensure aristocracy, meant in its literal sense, the government of the best. For instance, even the Athenian democracy was aware that specific offices, on which the welfare of the state depended, were too important to be assigned by lot and required the election of a citizen endowed with experience and competence. For these reasons the Athenians used preference for electing their *strategos*.<sup>22</sup>

The Athenian Stranger speaks of the different offices to be instituted in Magnesia in book VI of the *Laws*.<sup>23</sup> To be precise, the Athenian never speaks explicitly of the

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<sup>20</sup> For an interesting discussion of the terms *airesis*, *klerosis* and *prokrisis* in Aristotle and Plato see Morrow 233-38.

<sup>21</sup> This is a familiar Socratic objection to the electoral practice of democracy, see Xenophon, *Memorabilia*, I, 2, 9-11.

<sup>22</sup> See Morrow, 180.

<sup>23</sup> Other offices such as the Nocturnal Council and the observers of foreign regimes are mentioned only in the second half of the work. For a discussion about the composition of book VI and the possible revisions performed by Plato or Phillip of Opus see Morrow, 238-40.

institution of an *ekklesia* in Magnesia, he only refers to it in conjunction with other offices,<sup>24</sup> particularly with the election of military officials, but we may agree with Morrow that “[t]he assembly of the citizens is taken so much for granted in Plato’s law that its existence as an organ of government is nowhere explicitly stated” (157). This assembly should be composed by all adult citizen, women included; we must use the conditional tense for this claim since the Athenian never clearly describes its members. We know, however, that every member of each economic class, in which the citizenry is divided,<sup>25</sup> is obliged in certain cases to be part of the assembly ( *Leg.* VI 764a 1-b 1) and also that the assembly is composed by members of the army and veterans (753b 1-7). The mere fact that those who serve or have served in the army have a place in the assembly allows us to follow Morrow (157-58) in thinking that, on the one hand, not only the heads of families have the possibility to vote and to be elected, but also their fathers and sons, who, past the age of twenty, must enlist in the Magnesians militia (*Leg.* VI 785b 6) and, again, since women are allowed to take office after the age of forty (785b 5) and since they, too, are part of the army (785b 7-9), women also participate in the assembly. The participation to the assembly is compulsory and members of the higher classes may be fined for their absence (764a).

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<sup>24</sup> See 755 e 4, where a *sylogon* is gathered for the election of generals and army officials; 764 a 3 and 765a 6, where the same word is mentioned in conjunction, respectively, with the election of members of the policing service for the public square, the *agoranomoi*, and the magistrate of the chorus. There is a reference for precisely *ekklesia* at 764a 3.

<sup>25</sup> The Athenian divides the whole population of Magnesia in four property classes in book V. The unit to measure each class is the lot of land, which is assigned to each of the 5040 families of the colony (for the meaning of this number of families see *Leg.* V 737e 1-b 1). The poorest class will possess an amount of wealth that is equal to the lot, the class right above this one may possess twice as much, the third class three times as much, the fourth class four times as much. The excessive wealth of the richest class will be taken away by the state. This is a measure taken in order to avoid *diastasis*, dissention, in the state (see *Leg.* V 744a 8-45 b 2). It must be kept in mind that the word *diastasis* is a cognate of *stasis*, the intestine factional strife that the good legislator must prevent. For a discussion on *stasis* see below.

The *boulē* proposed by the Athenian for the city of Magnesia is clearly inspired by the model of the Athenian *boulē*, specifically for number of the councilors (four hundred with Solon, then five hundred with Kleisthenes in Athens, three hundred sixty in Magnesia) and the function and number of the prytanies (ten in Athens, twelve in Magnesia, with the task of acting as the executive branch of government at day and night) and the fact that the whole *boulē* remains in office for one year.<sup>26</sup> There are two chief features that differentiate the two councils: firstly, the Magnesian *boulē* does not possess judicial powers in the same measure as the Athenian council (such powers are reserved for the *nomophylakes*); secondly, the criteria for the election of the councilors differ. The basis for the election of the councilors in Athens were the ten tribes in which the Athenian civil body was divided, while in Magnesia the point of departure to select candidates for the *boulē* are the four economic classes, according to which the Athenian organizes the colony (*Leg.* VI 756c 1-2).

Along with the innovating concept of selecting the councilors from the citizens<sup>27</sup> according to their economic class, the Athenian proposes also an interesting electoral procedure (756c 3-e 8). The election of the councilors will take place over five days: during the first day an unspecified number of members from the richest class will be selected and every member of every class is compelled to vote for their election. On the second day, members of the second class of census will be elected with the same procedure. On the third day, the election of the members of the third class will be held,

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<sup>26</sup> For a complete compare and contrast analysis of the Athenian and the Magnesian *boulē* see Morrow 165-66, 172-75.

<sup>27</sup> By citizens here we must understand the number of those eligible to participate in the *ekklesia*.



the three higher classes are compelled to vote, while the lowest class may choose whether to participate. During the fourth day, for the election of the members from the fourth class, the lower two classes are free to attend or not to, while the higher two must attend, under penalty of a fee. During the fifth day, everyone is compelled to vote once again in order to select one hundred and eighty members from each class; each group from each class will be cut in half with an election by lot, so as to obtain the three hundred and sixty members of the *boulē*, ninety from each class.

The *nomophylakes* are thirty-seven in number, to be elected among people who are fifty years of age or older, they may remain in office for twenty years or until they reach the age of seventy. They must in the first place defend the constitution, as we have said above, and, secondly, they must keep a record of the possessions of each family, to ensure that no one exceeds the richest class in possessions or the poorest class in destitution.<sup>28</sup> They are elected once again by the *ekklesia*, in its function of military body (753b 4-7), the election must be held in the most honorable temple of the city and every elector will write on a tabled their preference and their generalities (753c 1-7). The first three hundred names with the majority of votes will be presented before the whole city and the city will vote again to select one hundred of them (753d 1-3). The people will vote a third time, with solemn ceremony, to elect the final thirty-seven *nomophylakes*, whom will be scrutinized before their election can be ratified (753d 4-6).

The magistrate of education must be a man at least fifty years of age and must be a father (765d 6-7). In his office he will most likely coordinate with the *archontes*

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<sup>28</sup> Minor duties of the *nomophylakes* include being in charge of foreign trade (847c -d), overseeing public decency (775b; 829d; 959d) and taking judicial actions especially involving public officials.

overseeing music and gymnastic (764c 5-65d 3),<sup>29</sup> but he and those who are to elect him “must be convinced that of the highest offices of the State this is by far the most important” (765e 1-2), since on him depends the character and the disposition of the future citizens (766a 1-4). This magistrate is selected, among the *nomophylakes*, by the totality of the officials, excluded the members of the *boulē*. Once the selection is done, the person selected will be scrutinized by the officials, but not by his fellow *nomophylakes*. He remains in office for five years (766b 5-c 1).

The army generals, in the number of three, are elected by the whole army with a show of hands, but the candidates are nominated by the *nomophylakes*. The other army officials are elected almost in the same fashion, but they are nominated by the generals and elected by their directly subordinate branch of the army (755b 3-56b 6).

Finally, we must mention the election of priests and priestess. They must be at least sixty years old (759d 2), physically able, pure of homicide and offenses towards the gods, and their families must be also pure (759c 3-6). They will remain in office for a year and are to be elected by lot, in order for the god to express a preference (759b 8-c 1).

The analysis of the electoral procedures of the offices of Magnesia can lead us toward an understanding of the kind of constitution described in the *Laws*. The mixture of electoral procedures by lot and by preference indicates that the Athenian is proposing a constitution wherein the aristocratic and democratic elements work in harmony. We must acknowledge, however, that the influence of the aristocratic element, the selection of the person according to her competence for the position, has greater influence than the democratic element. Let us take as an example the election of the *boulē*; once the seven

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<sup>29</sup> He can also count on the help of subordinates, VIII 813c 6-d 5.

hundred and twenty candidates have been selected according to their quality, that is, with a vote of preference, the nomination by lot, which must select half of them, has only a fifty percent possibility to fail and select the worse candidate over the best, but yet it allows for this mode of election to be considered, to an extent, democratic.<sup>30</sup> We must also notice that the most important offices, the *strategoi* and the *nomophylakes* are elected only by preference, since their duties are so fundamental for the welfare of the state that one may not risk that their nomination be influenced by chance. It is interesting to notice also that the most important office, that of the magistrate who oversees education, is not only elected by means of preference, but also that the electoral body is composed by magistrates, who by definition are the citizens with the best qualities, with the exclusion of the *boulē*, which is composed by members elected even in a minimal measure by lot.

Next to this emphasis on aristocratic devices for the selection of officials, we must consider also measures that are not only rather democratic, but democratic in a fashion that is almost contemporary. In the first place, we must consider the fact that suffrage and election are open to women as well, which is rather uncommon in Greek history, but also that the selection of councilors is organized in such a fashion as to permit that every economic class of the city is represented.<sup>31</sup> There are of course a number of technical

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<sup>30</sup> See Morrow, 168.

<sup>31</sup> The Athenian devices several mechanism to insure that there is no excessive financial disparity in the new colony; in the first place we have seen that the *nomophylakes* may confiscate the part of a patrimony that exceeds four times the value of the lot. Secondly we must also notice that young men are encouraged to disregard economic advantage in choosing a spouse and actually marry someone from a lower economic class, so as to create economic homogeneity among the population (VI 772e 7-73a 5). For this purpose the Athenian poses also a cap on dowry (774c 3-d 5). Another measure to prevent that one may become

problems with the election of the *boulē*, which are relative for the most part to electoral procedures; the Athenian is never clear on the number of preferences that one may list on one's tablet, nor is he clear on the way by which, during the fifth day, the candidates must be reduced to one hundred and eighty per class (Morrow, 169). However, the important innovation in using economic classes as electoral basis consist in considering "that just as the lot must sometimes be used if a legislator wishes to avoid faction in his state (757de), so also must difference of property be recognized" (Morrow, 170). In this sense, the procedure for the election of the *boulē* may be considered democratic. In the second place, we must consider that relying on economic classes for the election of the council assures representation to every class, "producing thereby a certain "democracy" of interests" (Morrow, *ivi*). Even here there are procedural problems to take into account; for instance the Athenian cannot assure that each of twelve prytanies will represent, with their thirty members, each class equally,<sup>32</sup> but at the same time, a council where every economic interest is represented is less likely to fall victim of certain social classes, especially the richest or the poorest.<sup>33</sup>

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exceedingly rich is to forbid possession of gold and silver and to create a special currency to be used only in Magnesia (V 741e 7-42a 7). All these measures are meant to prevent *distasis*.

<sup>32</sup> See Morrow, 173 n. 50.

<sup>33</sup> We must point out that Aristotle – who does not mention the possible disproportional number of class representative in the different prytanies – maintains that Plato, with the electoral procedure set in place for the council, is actually favoring an oligarchic system. His claim is based on the fact that the upper classes must vote at all times for the councilors, while the lower classes are excused for not voting when it comes to elect their own representatives. We must think, however, that Plato's strategy might be to rely on self-interest and expect the two lower classes to participate in the third and fourth day of election, while letting them free to attend their business if their economic conditions compel them to do so. In this sense we may agree with Morrow's response to this claim of Aristotle, pointing out that "in a council so organized [the council of Magnesia] the extremes of wealth and poverty would each be powerless to impose its will; only by combining could they equal the voting strength of the two middle classes, which would ordinarily,

Finally, the priests and priestess are elected by lot, but this measure can hardly be conceived as democratic; the candidates for priesthood not only have to undergo a thorough scrutiny, which will evaluate them as well as their family's background, but the election is thought to be actually a selection by the god. In the view of the Athenian chance is in fact controlled by the divinity (IV 709b 7-8).

The electoral procedures for the different offices show that the intention of the Athenian in constituting the state is to mix democratic and aristocratic policies; "in establishing all these offices [all the offices of which we have spoken above] we must make the appointments partly by election and partly by lot, mingling democratic with non-democratic [*me demon*, that is that are not (of preference) of the people] methods to secure mutual friendliness [*philia*]" (VI 759b 4-7). Consequently, we can say that the constitution that the Athenian is proposing will be one where the democratic element and the aristocratic work in harmony. In other words, the Athenian attempts to reconcile the supremacy of the people in the political system (and by the people we mean the whole range of facets of the electoral body, not the supremacy of one faction, not even if such faction happens to be the most numerous and the most influential) with the election of the best candidate for a given office (hoping that the people will be able to establish who is the most fitting person).<sup>34</sup> Together with the insight offered by the electoral processes, we must also consider that the attempt to find a median point between democracy and aristocracy is highlighted by the relevance that the magistrates have over the *ekklesia* and

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therefore, be the stabilizing forces in the constitution" (171). In this sense oligarchy will be avoided and, what is actually an Aristotelian ideal, as expressed in *Pol.* 1298b 13-22, will be realized.

<sup>34</sup> In this way the Athenian compromises the democratic assumption that any citizen would be competent to fill almost any office.

the *boulē*. As Klosko observes “the state [of Magnesia] combines the democratic principle of freedom from arbitrary authority with the monarchic principle of powerful magistrates who are not susceptible to popular whims” (223).<sup>35</sup>

At this point, we must ask what is the principle on which such a construction of constitutional offices is based and what kind of constitution (democratic, aristocratic, oligarchic, etc.) will be the one of Magnesia. As we have seen above, the Athenian states clearly that the basis for his constitution is *philia*,<sup>36</sup> but in its turn, *philia* is based on equality. “[E]quality produces the most friendly things” according to a proverb quoted by the Athenian (*Leg.* VI 757a 5), but equality has a wide semantic spectrum and the problem is to understand on what sort of equality the Athenian bases *philia*. The word used by Plato and translated with equality or proportion is *isotēs*, which has social as well as arithmetical and geometrical meaning.<sup>37</sup> The Athenian believes that the social effects of arithmetical and geometrical equality are opposite to each other (757b 2). Arithmetic equality, which is based on a system of measurement composed by interchangeable units,

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<sup>35</sup> This same view is shared by Morrow, who shows how in Magnesia the strength of democracy is mitigated by the presence of magistrates who take over judicial functions, which in democratic Athens were a prerogative of the *ekklesia*; by being endowed with both, legislative and judicial power, the assembly got to the point of confusing laws and regulations, bending the former to its will (177).

<sup>36</sup> The discussion of *philia* as political principle that is superior to *stasis* and must be the foundation of a political constitution is undertaken in book I of the *Laws*. For the clear claim that this is the ideal by which the law-giver, that is the constitutionalist, must be inspired see I 628c 6-d 1, where the Athenian claims that if the *nomothētēs* has to give laws with special attention to the best thing (*ariston*), then the laws will take into account reciprocal peace and wholesome friendship, *philophrosyne*. Components of this *philia* are *sophrosynē* and *eleutheria* (III 693c 7-8). In the following paragraphs we will be speaking of the constitution proposed by the Athenian as a middle way between monarchy and democracy, in that ambit it must be kept in mind that the monarchic element of the constitution will be the *sophrosynē* it shows, while the democratic is represented by the *eleutheria*.

<sup>37</sup> Morrow individuates also a musical meaning of proportion, relative to harmony. He claims also that the Pythagoreans were the first to give political value to those system of proportions; arithmetical, geometrical and harmonic. But in the *Laws* this latter sense of proportion does not play a politically determining role, rather it finds application in education.

is related with the democratic procedure the electing officials by lot (757b 5): each individual is interchangeable for another for filling a position. Geometrical equality, which is the harder to see, is the truest, the best and the most equal (757b 6), since it assigns more to the greater and less to the smaller.<sup>38</sup> It is the source of justice itself (757c 6). This latter form of equality, or – better – proportionality among unequal elements, has its foundation on the measure (*metrion* 757a 3; 757c 2). For the measure<sup>39</sup> to be the principle of proportionality we must think of it not only as standing between two opposites (that is in terms of *mesotēs*, the median point between two extremes), but also as relating differently to each of the opposites (1:2=2:4).<sup>40</sup> This kind of measure and proportionality must be the ideal of the *nomothetēs* in setting up a new constitution. The

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<sup>38</sup> From this perspective we may see a communist trait of Platonic philosophy, or rather a Platonic influence on Marxian communism, especially if we think of the maxim from the *Critique of the Gotha Programme* “From each according to his ability, to each according to his needs!”

<sup>39</sup> Morrow reminds us of the fundamental role played by the concept of measure and being measured in Greek culture, ethics and politics (522-25).

<sup>40</sup> What I am trying to convey in saying that the *metrion* relates differently to the two extremes of a proportion can be illustrated with an example. Firstly, however, let me recall that a proportion always occupies a middle place between two poles, but it does so in different fashions, depending on the kind of proportion it is. In other words, the middle position of a proportion is not to be understood “only or primarily the arithmetical mean: [mean] is the oldest word for a proportion of any kind and however determined” (Burnet, 70). The proportion established by the *metrion* is precisely not an arithmetical proportion, but a geometrical one. Let us define arithmetic and geometric proportion. Let us say that we have 4 numbers a,b,c,d. These numbers are in arithmetic proportion if b minus a equals d minus c. They are in geometric proportion if b divided by a is equal to d divided by c. For example, 1,2,3,4 is of arithmetic proportion as is 2,6,15,19. 1,2,3,6 is of geometric proportion as is 2,6,3,9. Let us now apply this definition to an example. Let us say that we have six portions of lotus and two hungry comrades of Odysseus. According to arithmetic proportion each man must get an equal amount of lotus, that is, three portions of lotus. In the case of geometric proportion, we would need to consider also the ratio between the two men, for instance, in terms of size. Let us assume that one is twice as big as the other, consequently he would need a larger amount of lotus to become forgetful and abandon his desire to return to Ithaca. In this case, then, they will divide the portions of lotus according to the following proportion 1:2=2:4. The smaller man will get two portions of lotus and the bigger will get twice as much. The division of the lotus relates equally (each man gets three portions of lotus) to each man in the former case, and differently (one man receives two pieces, while the other receives four) in the latter case. When I say that the *metrion* of a proportion relates differently to its extremes, I mean that it relates to them geometrically rather than arithmetically.

extremes that frame such a proportion in the political context are monarchy<sup>41</sup> and democracy, in the middle of which the *politeia* always needs to be (756e 10).

Monarchy and democracy are the archetypes of every constitution and a good *politeia* will possess elements of both these regimes according to measure (III 693e 6-7): the monarchical element will make the constitution moderate and the democratic element will make it free (693c 6-d 5). In this way, the constitution will insure *philia* within the state.<sup>42</sup> On the one hand, with an analysis of the Persian regime (694a 3-698a 3), the Athenian shows that an excess of despotism causes a monarchy to dismiss the freedom necessary for its people and compromises the *philia* and the sense of commonality within the state (697c 7-d 1). The cause of the excess in despotism is the lack of moral education (694e 1-4; 695e 4-96a 4) of the ruling party and, in the first place, a lack of moderation (*sophrosyne*). Specifically, lack of education causes the ruler to lose sight of the order of pivotal values that must lead one's life as well as the state. The ruler forgets that there are different goods: the goods of the soul (among which there is *sophrosyne*), the goods of

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<sup>41</sup> Here again we must refer to Aristotle and his evaluation of Plato's mixed state in the law ( *Pol.* II, vi 1266a 1-ff.). Summarizing his remarks about the *Laws*, we may say that the philosopher of Stagira claims that Plato attempted to mix tyranny with the worse type of democracy and ended up constituting an oligarchy. These considerations seem strangely perfunctory. Barker says that Aristotle "seems doubly unjust to Plato" for his misuse of the word tyranny and democracy (60, n. 2); Klosko claims that one "can find a better interpretation than Aristotle's" (222) and Morrow makes perhaps the harshest comment against Aristotle's interpretation, defining it "pedantic" (530). Aristotle's comment happens to be inappropriate especially for his reference to tyranny; it is true that Plato speaks of tyranny as a remedy to achieve the ideal constitution (IV 709e 6-10a 2), but in a context that is unrelated to the formation of the offices in a state and it is much closer to the theme of impressing an ethical standard on the city. On the other hand, in the discussion in book III about the formation of the state, Plato speaks clearly of monarchy in terms of aristocracy (681d 3-5).

<sup>42</sup> Needless to say that the monarchical element and the democratic element are reflected in the offices proposed by the Athenian in his constitution; specifically in the election by preference and the election by lot, and in the high status of the magistrates who are nonetheless elected by the *ekklesia*.



the body and the goods of possessions (697a 10-b 6), and subverts the scale of values privileging the riches over anything else (697b 6-c 2).<sup>43</sup>

On the other hand, the analysis of the Athenian regime is meant to give a picture of the other limit, democracy (698a 9-701b 3). Once again, the problem of democracy is relative to education; for there to be a democracy that does not degenerate into populism there needs be a sense of shame (698b 6; 699c 4).<sup>44</sup> Such sense of shame is meant to moderate freedom in such a way as to maintain that all citizens are subjected to the laws; such general subjection, or rather respect of the laws is the basis to grant *philia* in democracy (699c 1-6). The *philia* in a democratic regime is compromised when the citizens disregard the opinion of those that are better, that is, those who are experts in certain fields or those who have a better education or those who are morally refined.<sup>45</sup> At such point, there is an excess of freedom, which culminates in relativism and dissolves social cohesion (701a 8-b 3).

We see, then, that the ideal of a measure between monarchy (that is aristocracy) and democracy, the ideal of a measure that may assure moderation, freedom and social cohesion, informs the constitutional offices by intervening on the electoral laws that

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<sup>43</sup> Once again, one of the main concerns of the Athenian is to limit the inference of economic power over the political organization.

<sup>44</sup> *Aidos*, is discussed in the two previous books in two different context both relating to education, music (671d 2) and wine drinking (I 646e 3-ff). The theme of shame in regards to music comes back in the discussion about Athenian democracy (700a 7-01a 3), but we will say more about it in part four of this essay.

<sup>45</sup> This is to say that there is a total abandonment of geometrical proportionality in regards to specific tasks (the right person for the right position), as well as for society as a whole (701b 5-d 3), in consequence of the disregard of any social connection that does not level the social participants on a numeral series of equivalent units.

regulate the creation of such offices.<sup>46</sup> At the same time, we notice also that such an ideal is not only one that leads to the structuring of the state system, but also one that must be deep rooted in society as a whole, in its participants, thanks to the success of a certain moral education. In other words, such an ideal measure is the *ēthos* of the constitution of which we have spoken above,<sup>47</sup> the *ēthos* which informs a constitution, constitutional offices and eventual legislative codes that are inspired by the constitution. The relation between the *ēthos* of the constitution and the moral education of the people of the state takes place by means of a shared reference to measure. Measure, however, is primarily an ethical standard than one of legislation. With such reference to measure, therefore, the Athenian is suggesting that a constitution is not self referential, but that it is founded on the ethical sphere. This ethical sphere, in turn, determines the safeness, that is, the integrity, of the constitution, which amount to say that it has priority over the constitution. In the next sessions we will try to understand in what senses the ethical sphere holds prior to the legislative.

### **The priority of Ethics over Laws.**

We have just claimed that for a regime to be in place, the elements to be regarded as fundamental are, in order of importance: (1) ethics and customs together with (1.1) moral education; (2) the constitution (2.1) inspired by those fundamental ideals gained

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<sup>46</sup> Morrow describes excellently the ideal of the measure in the constitutional context from the perspective of philosophy of law. Inspired by the Spartan model (*Leg.* III 691d 8-92b 1), Plato creates a system of “check and balances” within the executive power, by instituting a number of offices (such as the *nomphylakes*, but also the magistrates dedicated to the audit of public officials), which will limit the possible excesses of the officials (Morrow, 539). He also individuates many other details in minor constitutional offices, that constitute a mixture in the Magnesian *politeia* (535).

<sup>47</sup> See p. 5 n. 5.

through moral education, (2.2) with its constitutional offices and (2.3) the laws that govern them; and finally (3) the positive laws. That is to say that, the constitution, its inspiration and its law, together with all the laws that agree with it, ultimately depend on ethics (which, in turn, depend on moral education). If the ethical substratum fails, the whole structure of the constitution falls apart, or, at least, is no longer legitimate.<sup>48</sup> We must notice that this structure is not only the result of the meditations of the three old men in the *Laws*, meditations that aim at constituting a free and just (*sophron*) state for the Magnesians, but it is also the outcome of a philosophical investigation on the nature of the law; the legal code does not stand if it is not grounded in ethics.

Thus, we need to ask on what basis the Athenian may claim for such a priority of ethics over law. Let us begin our answer by referring to the structure of the text; book I opens rather abruptly (*Leg.* I 624a 1-2), with the Athenian asking his interlocutors whether they deem their constitutions to be the work of a man or that of a god. But the theme of the connection between divinity and constitution is dropped rather soon<sup>49</sup> (625c 9), in favor of a discussion about the goal of a constitution (instituting *philia*) (625c 9-29e 8) and the means to bring about a constitution (moral education not only with regards to courage, but in light of virtue, *aretē* as a whole and especially with regards to pleasure)

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<sup>48</sup> History presents us with numerous examples of constitutions that are compromised by the lack of moral standards on which they were based. Perhaps the most memorable case is the one of the Weimar Republic, whose preamble recited, “The German people united in its tribes and inspired with the will to renew and strengthen the Reich in liberty and justice, to serve internal and external tranquility, and to promote social progress, has adopted this Constitution.” The laws of the constitution in the first place did not impede the rise of the Third Reich in 1933 (actually article 48 gave Hitler the special powers necessary to begin his Nazi dictatorship) and secondly the constitution remained in place even during the Nazi government had seized power, even when such government proclaimed laws that were in obvious contrast with the spirit of the constitution. According to the Platonic analysis in the *Laws*, that was possible because there was no ethical substratum to uphold the constitution, which, ultimately, became just a piece of paper.

<sup>49</sup> These theme comes back in sporadic sentences throughout the text, but it is discussed in detail in book X.

(630a 1-ff.). Then, at the end of the *Laws*, in book XII, the Athenian and Kleinias take up again the theme of *aretē*<sup>-</sup> (963a 1-ff.), defining it as the political *telos* of their city and assigning to the nocturnal council the task to lead the city towards such an end. In the works of Plato, usually the structure of the text is at least as important for a correct understanding as its content. If a work called the *nomoi* opens and closes on the theme of *aretē*<sup>-</sup>, we may guess that ethics plays a central role in an investigation about laws. Also, we must remember that the word “*nomos*” means “legal code” as well as “custom,” therefore, an analysis of the *nomoi* must refer to their ethical grounding as one of their fundamental features.

In order to understand the claim that ethics is crucial for a constitution, we must analyze the first half of book III, when the Athenian describes the origin of constitution. Before we do so, however, we must make a few preliminary considerations. At the outset of the book, the Athenian lets the reader know that the three old men will begin an investigation about the origin, *archē*<sup>-</sup>, of the constitution. Then they proceed with a account, partly mythological, partly historical, of how constitutions in their historical realization and, specifically, the constitution of Sparta, came to be. This speech, which is apparently aimed at praising Sparta for its mixed constitutional form (691d 8-92d 8), can be understood also as a philosophical investigation of the nature, or rather the principle, of constitution in general. This speech of the Athenian must be thought then as a genealogy<sup>50</sup> of the constitution (in the form of a story about the formation of the constitutional state), which aims at discovering not only the phases of formation of a constitution, but most importantly its essential components. From this perspective, the

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<sup>50</sup> I employ this term in the philosophical sense of a method of inquiry as thought by Nietzsche.

sequence of events recounted by the Athenian must be graded not simply on the chronological scale, but also on the philosophical; the events that come first are more fundamental than the elements listed later.

A proof that such a reading of this part of book III is practicable comes from two observations made by the Athenian: first he claims that a narration *tout court* of the history of the constitutions would be impossible because the time of past political institutions is infinite. The very fact that the time to consider in the narration is infinite makes the task of finding the *archē* of the constitution impossible<sup>51</sup> (676a 7-b8). The second consideration is relative to the transformations of political institutions within such an infinite amount of time: the combinations would be endless, constitutions rose and fell, became bigger and smaller then bigger again, they bettered themselves and became worse (676b 9-c 4).<sup>52</sup> In order to solve this problem, that is, in order to find an *archē* in such “bad infinity” of transformations, the Athenian changes slightly the goal of the narration he is about to make; the three old men will look no longer for the *archē* of the constitution, but for the cause of the transformation of the constitutions (676 c6-8). In this way they will, on the one hand, bypass the problem of the infinity of time and, on the other, will transform the story about to be told in a philosophical narrative; a search for the causes.

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<sup>51</sup> Let's consider that not only an infinite time does not allow for an *archē* since there is no beginning, but the narration of an infinite time would require in the first place infinite time for the story teller to recount the endless facts and secondly an infinite dramatic time.

<sup>52</sup> This idea of transformation of the constitutions is common to book VIII and beginning of book IX of the *Republic*, but in that context is employed to show how a constitution degenerates from the ideal of a monarchy to a tyranny and, finally, to prove Socrates' claim that the just person is also the happiest.

The narration begins with the Athenian making *tabula rasa* of any possible political invention, idea or project to be present at the outset of our fable. After a great flood just a few “sparkles” of humanity survived, for they inhabited the mountains (677a 4- b 3). These people were mostly shepherds and they knew no other *technē* besides their own,<sup>53</sup> specifically they knew nothing of the machinations that people employ in the cities to take advantage of one another;<sup>54</sup> they did not even possess any memory of past political institutions (678a 2-6). The only thing they knew was the fear of the sea, which resounded (*enaulos*)<sup>55</sup> in them all, so they stayed on elevated lands (678c 1-2). They had no problem gathering enough food, avoiding any excess and defect in property (679a 3-4), they had enough to dress themselves and to cook (679a 6-b3)<sup>56</sup>. They were naïve in a positive sense, since they knew nothing about lies and they believed everything they heard (679c 2-8).<sup>57</sup> Civil strife and war were unknown to them (679d 5-7) and they loved

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<sup>53</sup> The human kind had to wait for new inventors in order to regain all the arts (677d 1-9). Professor John Sallis noted during a recent workshop on Plato’s *Laws* at the University of Kentucky, that the majority of these inventors (four on a total of seven) are engaged in the field of music. This remark is the first of many which will highlight the role of music in the acquisition of knowledge.

<sup>54</sup> The Athenian is basically describing a state of nature lacking the violence, which Hobbes saw in it.

<sup>55</sup> This is another reference to music, via the *aulos*, the flute, a cognate of this adjective. The primitive people of whom the Athenian speaks were utterly ignorant (678 b1-3); to fear the sea was the only thing they knew and the way in which this knowledge presented itself was by means of a sound. Knowing seems to be in the first place a matter of music. This preliminary intuition will be confirmed by our further discussion about music as the means par excellence of moral education.

<sup>56</sup> Since the human kind at this stage lacks no means of survivor and possesses no gold or silver, there is no reason for being litigious and everyone lives in peace. The reference to wealth and specifically to the absence of gold and silver is the same that is made by the Athenian in the construction of the Magnesians constitution, as we have seen above. In this sense then, we can read this initial stage of the political development of human kind as an ideal to which the law giving Athenian may not want to come back, but that inspires him nonetheless.

<sup>57</sup> The words they uttered were in conformity with truth, that is to say that such words were a congruent imitation of truth. It is useful to keep this notation in mind, together with the remarks about musical knowledge, as references to our future discussion about musical education.

each other at first sight (678e 9-ff.). In other words, they were more ingenuous than current people, but also more courageous, more moderate and more just (679e 2-3). They lived well while possessing no writing skills, and, therefore, no laws, and behaving according what the Athenian calls “the laws of the fathers” (680a 5-7). That is not to say that they had no constitution, they had one, which the Athenian calls “dynasty”<sup>58</sup> (680b 2).

At this point, the Athenian has delineated the first form of *politeia*,<sup>59</sup> showing that there is no need for a codified legal system in order to have a constitution. The simplest form of constitution, the one that organizes the family,<sup>60</sup> is based simply on the naïve

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<sup>58</sup> The dynasty is the simplest political aggregate individuated by the Athenian. It is structured as the patriarchal family: there is a head of the family who commands over all the other members who are ranked, we can guess, according to age and gender.

<sup>59</sup> It is surprising to see Plato using the word *politeia* (680a 9) for a political structure that has no legislator, nor written laws (680a 3-7). However, we must keep in mind, in the first place, that there are laws (“the laws of the fathers”) upholding the dynasty, but they are a special kind of law: they are oral; secondly, that even today there are constitutions that are not completely codified, such as the constitution of the United Kingdom; thirdly, the word *politeia* has a wider semantic field than our “constitution.” It refers chiefly to a “community of man” (Plato, *Definitions*, 413e) and only secondarily to a body of written laws.

<sup>60</sup> See 680b 1-c 1, for a reference to this form of government to the family structure, the Athenian takes as an example the Homeric Cyclops. In the text the Athenian quotes from *Odyssey* vv. 112-15, where Odysseus does not speak of *nomoi*, not even in the sense of unwritten social customs, instead, he uses the noun *themistes* and the verb *themisteuein* to speak of social life and conventions. We must make a few considerations in regards to this quotation. In the first place we must underscore the difference between *themis* and *nomos*, even if it is a blurry one. Whereas *nomos* is the normative convention, which is largely accepted, not only in the ambit of law, but even in the context of ethics and customs, *themis* is the ordinance in a more primitive sense, that is, before social convention. Jane Ellen Harrison says that *themis* is the convention in the sense of the English doom (483), it is an ordinance that may not be broken, but it does not originate from a shared agreement; it is in the first place either a private matter, the belief of one person, or the ordinance from a greater power, often divine, which becomes a social norm, a law, when it is respected by many. However, it needs not be shared by many, but only respected. In this sense there is an opposition between *themis* and *peitho* (Harrison, 486) (where *peitho* seems to be more on the side of *nomos*) insofar as the latter does not require obligation, but agreement. Secondly, we must note that the Athenian uses this quotation of Homer in order to prove his point (680c 6-d 5), but he does not analyze it in all fairness. There is in fact a contradiction in the Homeric text he quotes; on v. 112 Odysseus says that among the Cyclopes there are no *boulephoroi*, consultations, nor *themistes*, laws. Then in v. 114-5 he says that each Cyclops rules, *themisteuei* over his own family. So, we ask, do the Cyclopes know law, or rather ordinance, in terms of *themis* or not? Harrison provides an answer to this passage (484); they know *themis* insofar as they are heads of families, that is insofar as they establish ordinances that have immediate effects

*ēthos* of the generations who survived the flood and on unwritten norms. Here we have a first serious evidence to support the thesis of this paper: the prevalence of the ethical standard over the legal for the formation of a constitution and of legal codes. Norms that are not written, that is to say customs and rules of conduct, and a peaceful and friendly character are presented by the Athenian as the first sufficient elements to create a *politeia*. However, if this is the case, the Athenian must ask the question; why did the survivors of the flood even need laws and a legislator at all (679e 6-80a 1)?

The story told by the Athenian goes on narrating how, with time passing, several of those familial constitutions gather together to form *poleis*; people begin farming, they build fortifications and live together in one big common house (680e 6-81a 3).<sup>61</sup> It must be noted that in this further constitutional development, education of the individual, in terms of customs as well as ethics, is still led by the single family (681a 7-b 7). At this stage we find the beginning of legislation (681c 4); some of the members of the newly formed *polis* are chosen as legislators to select from each family the *nomoi* that are considered the best for the community. On the basis of the *dynasteia* in charge, they will

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over their immediate subordinates and that such ordinances may not be questioned by anyone of those who are bound to live according to them. At the same time, they do not know *themis* in the social context, that is, in the sense of the unwritten yet bonding rule of discussing opinions together with one's neighbors, in order to create *nomoi*. Thirdly, given the previous considerations, we can shed some light on the Athenian's use of *patrioi nomoi*. They are in fact relative to the household, but they are not *themis*, insofar as they must be socially accepted convention. Therefore the example of the Cyclops, to explain the first instance of *politeia*, which are solely based on *ēthos*, is instrumental, but imprecise. Instrumental insofar as it is a clear example for Plato's contemporaries, as well as for the modern reader, of a *politeia* that stands on no law, imprecise because while the Athenian aims at defining the ambit of the *politeia* as one of shared consensus (*nomos*) since its very beginning, it points at an example of imposition.

<sup>61</sup> This perspective on the origin of the state must have been a product of the Academy, Aristotle adopts it as well in the *Politics* (I, 2, 1252a 24-ff.).



also select *archontes*, thereby giving birth to an aristocracy,<sup>62</sup> the second form of *politeia* (681c 7-d 5).

In this second instance of constitution we see that the prevalence of ethics over law in the formation of offices is maintained and, to an extent, reinforced. Maintained because the ethical standards of the former constitution become the basis from which the legislative system is derived, reinforced because some of these *patrioi nomoi* are selected and codified in the legal system. This second operation is especial interesting, since, with it, the Athenian claims that laws are nothing more than codified and widely accepted social customs. This consideration marks a clear prevalence of ethics over legislation, while explaining the birth of the latter: legislation consists of a few shared practices which are elected to testify for the cohesiveness of a heterogeneous group of individuals.

The Athenian individuates two additional forms of constitution: the third constitution finds an example in Troy, where we find all the *eidē* and all the *pathēmata* of every constitution (681d 6-e 5)<sup>63</sup>, and the fourth exemplified by the leading Doric states of the Peloponnesus, Argo, Messene and Sparta (683c 8-ff.). At this point, the question of

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<sup>62</sup> One may wonder why the selection of magistrates from the pool of father-legislators of each family would result in aristocracy. To clarify this point we must refer again to the principle of geometric proportionality. In the Athenian's view the father is, naturally, the best element of the family (680e 3-4; 690a 3-4) with respect to the other members of the family. Therefore he will have a greater share in the *optimum* of a human being. When the selection of magistrates is among those who are already the best of society, it is inevitable that an aristocracy will be formed.

<sup>63</sup> It is rather unclear why the Athenian describes Troy in such a way; is he saying that this constitution is a collection of many different constitutions of the second kind? Does he mean that the constitution of Ilium is an anticipation of the mixed constitution that will find its fullest development in Sparta? Both hypotheses are grounded in the structure of the text, the former relates to what has come before, the latter to what is about to be discussed. Yet the first question seems to be less speculative and, because of that, more trustworthy; the Athenian needs a third step in order to arrive at the *polis* as Plato's contemporaries knew it, the state in fact was not limited to the sole cities, but comprehended a number of small centers that were in the sphere of influence of a major urban site. Also, we must consider that if the constitution of Ilium were such a revolutionary institution as that of Sparta the Athenian would have discussed it in detail, while he moves immediately to the description of the fourth constitution, the Spartan.

the cause of change in a constitution comes back and can be finally answered with regards to the fourth constitution (686b 6-7). The change in the Doric constitution, which caused Argo and Messene to lose their power is due to the fact that the legislator did not posit laws in order to serve the purpose of virtue as a whole (688a 1-b 4) and that happened because the *nomothetēs* was ignorant of the most important human affairs (688c 7-d 1). The centrality of ethics for law comes back even in the context of a complex constitutional structure such as that of the Doric kingdom and for the second time the thesis of this paper is confirmed. Ethics is so fundamental for legislation that not only it is the sufficient element to create a constitution, but also *aretē* must be the aim of the legislator and, therefore the end of any law.<sup>64</sup>

Besides the philosophical narrative of the origin of the state, we must also consider other instances, which prove the priority of ethics over law. We must reflect especially on the inability, or rather the impossibility, of law to cover every aspect of human life; in other words, law may not take over the role of ethics. In the first place, it is impossible for law to regulate ethical aspects, especially those concerning the privacy of one's household since there seems to be no legal generality to comprehend the many and idiosyncratic habits that are proper to each and every family<sup>65</sup> (VII, 788a 4-b 3).

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<sup>64</sup> An interesting remark for the topic of the beginning and the end of law in ethics comes at 689c 6-d 5; a legislator or, rather, a leader in the *polis* must be someone who is able to discern and choose correctly pleasures and pains (which, as we shall see are a main feature of moral education) regardless of the logical caviling of which one might be able. For what concerns the constitution proposed by the Athenian we must look at the *nomophylakes* of Magnesia, with Morrow, as the embodied ideal of the virtuous leader. We can see from the modeling of the *nomophylakes* on the Areopagus (and the moral stature that the latter enjoyed) (214) and from the absence of disciplinary powers for the guardians of the law, that they must rely on moral authority in order to enforce their monitoring role (198).

<sup>65</sup> This point can be also proved retrospectively, with reference to the philosophical narrative of the origin of the constitution. The legal independency of the *dynasteia* is absorbed and yet preserved in the formation of more complex forms of *politeiai*. The first form of constitution maintains always a certain independency

Secondly, those ethical and private aspects constitute the very basis for the preservation of the law, in two senses: if those aspects happen to be regulated and those regulation disregarded, they may jeopardize the whole legal structure, since the citizens would no longer feel compelled to abide by law, once that they had been forced to break it (788b 6-7); but, most importantly, the private sphere is the one where ethical education begins and if such an education fails to form individuals (particularly children) according to the ethics on which is based the legislative system, the legal structure will be, once again, undermined (790b 1-4). These considerations show another aspect according to which ethics, in terms of custom as well as *aretē*, is primary with respect to law.

The Athenian calls the ethical norms of the private sphere *patrioi nomoi*<sup>66</sup> and equates them to *agrapha nomima* (793a 10-b1). He describes these ethical norms with an architectural metaphor, which is incredibly efficacious to explain how these unwritten regulations relate to the legal code.

For [the *agrapha nomina*] act as bonds in every constitution and they stand in the middle of every codified (*en grammasi tethenton*) law, those already passed and those that will be established, exactly like paternal (*patria*) and originary (*archaia*) norms, which, if well established and practiced serve to wrap up (*perikalypsanta*) securely the laws already written, whereas if they perversely move away from the right way, like in a house masons' supports that collapse from their middle position, they bring everything else tumbling down along with them, one thing buried under another, first the supports themselves and then what was built beautifully after them, once the original (*achaion*) supports have fallen (793b 4-c 5).<sup>67</sup>

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from the latter forms, at least in areas such as practical education and rearing of the offspring (789e 1-90a 3).

<sup>66</sup> The fact that the Athenian uses the *patrioi nomoi* in this context as well as to describe the initial stage of the *politeia*, reinforces the link between this ambit of the law and the first stage of the philosophical narration of the origin of law.

<sup>67</sup> Bury's translation modified.

While the *patrioi nomoi* indicated the foundational role of ethics for legislation, with the *agrapha nomima*, we arrive at a third important evidence of the priority of ethics over written laws for the success of a legal code. If the *patrioi nomoi* indicated that ethical norms are the first sufficient element for the creation of a constitution, the *agrapha nomima* present the necessity of ethical norms in the codified statute of a state. Therefore, ethics remains a crucial aspect of legislation, not only with regards to its origin, but also for its present and future, and even the most refined legislation will fail if it is not supported by the ethical standards.<sup>68</sup>

We must consider that, in order to be determinant for the safeguarding of the laws in complex social contexts such as the *polis*, the ethical standards must be regarded as true and worthy of obedience by the whole social body. This is the case for instance of ethical norms regarding incestuous relations (VIII 838a 9-b 5). We must consider also what is the mechanism according to which the ethical norm comes to prevail and become an *agraphos nomos*; the Athenian is aware of the fact that simply formulating verbally the prohibition of entering in sexual relations with one's close relative is not enough; in order to become an unwritten law, the ethical norm must become public opinion (*pheme*, 838c 8-d 2). The most common way to make or maintain, as well as to measure, public opinion is through the media, and such was the case also at Plato's time. In the specific example, incestuous relations, the Athenian recognizes the great power of tragedy and

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<sup>68</sup> It is not unusual to think of this dependence of legislation on ethical norms even in our own legal system; let us think for example about the ethical burden that is involved in that rather undefined area of legislation that is known as common law, with respect to the area known as statutory law. However, we must keep in mind that "[t]he Anglo-American conception of the unwritten common law and the Continental doctrine of unwritten law, which attaches to the monarchical tradition and is administered by the executive department as distinguished from the courts, approximate but do not equal Plato's idea. Unwritten law represents specifically the rules and regulation founded upon immemorial tradition and social usage" (Cairns, 364-65).

comedy in making and preserving public opinion what it is (838b 10-c 7). We must ask then, what is the role that theater and other opinion making apparatuses play in the formation of a shared ethical conception and what is the role of the *nomothetēs*, the constitutionalist, with regards to the creation of ethical standards?

### **The Role of the Legislator in the Creation of Ethical Standards: Education of the Children**

Let us begin by answering the latter question. We have seen, in parts one and two of this essay, that the lawgiver, in the person of the three old men of the *Laws* or as the future members of constitutional offices, has the duty to pass laws for the *polis*. However, since ethics entertains a fundamental role with law, the *nomothetēs* is not exempt from being concerned with ethics. We have also seen that the Athenian states clearly, at the outset of the *Laws*, the centrality of *arete* for legislation and we have noticed how he also maintains that the legislator must have ethics as a goal when formulating laws. Now we try to understand better what this latter remark means.

In book I, the Athenian discusses for the most part the legislative system of Sparta and Crete as understood by Megillus and Kleinias. The two men believe that their divine legislators, Apollo through Lycurgus and Zeus through Minos, have established the constitutions of their cities paying particular attention to the role of courage, since the two cities were born to be military powers (I 626b 5-c 5). The Athenian, however, shows them that courage does not encompass the whole of virtue and therefore it is not enough to inspire the creation of a constitution; because it is only a part of virtue, courage may prevent the perils of war, but not those of civil war (*stasis*, 628a 9-b 5). Since, as we have

said above, the *nomothetēs* must aim at internal peace, *philia*, as a remedy to *stasis*, he must abide by a notion of *aretē* that is more comprehensive than courage. Such a notion integrates courage with justice, moderation and practical wisdom (630a 8-b 1); “both, especially the legislator inspired by Zeus,<sup>69</sup> but also every legislator who is worth his salt, will legislate always with a single eye to the highest *aretē*”<sup>70</sup> (630c 1-4).

The highest *aretē* in the opinion of the Athenian conforms to the following scheme. There are minor or human goods: health, beauty, strength in running and in all the other physical movements, wealth; and major or divine goods: *phronesis*, *sophron psyches*, *dikaiosyne* (which is a mix of wisdom and moderation of the soul with courage)<sup>71</sup> and finally *andreia* (631c 1-d 1). The divine goods are naturally more important than the human goods<sup>72</sup> and prior to them we find *nous* (631d 5). The legislator will keep in mind this scheme when creating laws to regulate human existence so as to ensure the happiness of the citizens (631b 5-6).

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<sup>69</sup> Minos, as well as Lycurgus, the divine legislators maintained in fact the whole of virtue as an ideal for their legislation (630d 4-7).

<sup>70</sup> Bury's translation modified. Even though the Athenian's revision of ethical principles at the basis of the legislative body is meant as a criticism of Megillus' and Kleinias' interpretation of their laws, Plato manages to reproach, on a side note, also those legislators who use their power to promote laws *ad personam* (630e-31a). This latter example of legislation is, in the perspective of the Athenian, even more corrupted than the Spartan's and the Cretan's understandings, since it does not even take into account the role of ethics within law. At this point we may consider how distant the Athenian's philosophical reflection on law is from some contemporary legislation. Let us think for instance of the striking example of Italy, where, over the last two decades, the center right majority, led by Silvio Berlusconi, has approved a number of laws clearly meant to protect its leader from corruption charges (Law num. 61/2002, 367/2001, 124/2008, the latter is also known as Lodo Alfano, which substantially prescribes the impossibility to try in a court of law the four highest representative of the state, while in office. This law has been rejected by the Italian Supreme Court on grounds of unconstitutionality on 10/07/2009) and to preserve his media empire (Law num. 112/2004, also known as Legge Gasparri).

<sup>71</sup> Justice is the cooperation of the three other virtues; its all-encompassing structure will be at the basis of education as we will see in a moment.

<sup>72</sup> Once again the Athenian pays particular attention to the role of monetary wealth and virtue; *plutos*, like the blind Greek god, must be always accompanied by the sharp sight of *phronesis* (631c 4-5).

So far it has been established that the legislator must regard ethics as an essential component of legislation since a philosophical analysis of legislation reveals its dependency on ethics. However, we must also consider that there is a political reason for the prominence of ethics in the work of the legislator, since the cultivation of human and divine goods is the focus of the life of a Magnesians. The free person in Magnesia is expected to cultivate herself to the point of not having even time to sleep (VII 807c 6-808a 3). Even though one is still in charge of the administration of one's household, the majority of the workforce will be constituted by slaves and metics,<sup>73</sup> who will take care of commerce and any other necessary activity that involves money (XI 918c 9-20c 9). The free citizen will have therefore much free time (VIII 828d 5-9), which will be employed in the celebration of divinities and in the ritual games that accompany it. There will be a celebration every day (828a 7-b 3) and twelve major celebrations every year (828b 8-c 1), per each celebration there will be games proportioned to the event, when the citizens will play as if they were to train for war (829c 7-31a 3), since, after all, they are the members of the army<sup>74</sup>.

In addition to these considerations there is also a more strictly philosophical reason for which a legislator should look at ethics when positing law. Let us analyze a rather famous passage in the *Laws*, the one that portrays human beings as puppets in the hands of the gods. This is a rather complicated passage, not so much because the image it represents is hard to interpret, but rather because it is the point of conversion of several

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<sup>73</sup> Alien residents as we like to call them these days.

<sup>74</sup> We can picture the political organization proposed by the Athenian as an attempt to bring back the age of Cyclopes, which he had praised in book III, when, according to Homer, the one eyed giants had anything they might have wished for their sustenance and spent the whole day praising the gods (vv. 105-ff.).

themes that have been mentioned in the previous pages of the *Laws*: the psychological theme of dominating oneself and the related theme of *stasis* (626c 6-e 5), the theme of education as cultivation of virtue, the theme of symposia (639d 5-ff.) and the general theme of law in its relation to ethics.<sup>75</sup> We will focus on this latter aspect,

Let us suppose that each of us living creatures is a divine puppet, whether contrived by way of a toy of theirs [of the gods] or with some serious purpose attached to it— for as to that we know nothing; but this we do know that these affections in us, like sinews or cords, drag us along and, being opposed to each other, pull one against the other to opposite actions; and herein lies the dividing line between goodness (*aretē*) and badness (*kakia*). For, as the argument (*logos*) declares, there is one of these pulling forces which every man should always follow and never leave hold of, counteracting thereby the pull of the other sinews: it is the leading-string, golden and holy, of “calculation,” called the public law of the State. Whereas the other chords are hard and steely and of every possible shape and resemblance, this one is flexible, since it is of gold. With that most excellent leading-string of the law we must cooperate always; for since calculation is excellent, but gentle rather than violent, its leading-string needs helpers to ensure that the golden kind within us may vanquish the other kinds (644d 7-45a 1).<sup>76</sup>

The image proposed by the Athenian pictures the psychological disposition of the individual as a battlefield where three forces are at stake; the two iron cords and the golden one. The two iron forces are hard and have many shapes, the golden one is flexible. Flexibility is associated with gentleness and, by contrast, hardness is a sign of violence; the golden cord will be gentle in leading the human soul, while the other two cords will pull one roughly toward their direction.<sup>77</sup> The metallic quality of the chords

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<sup>75</sup> Usually interpreters point at this passage to discuss the theme of psychology and self mastery (Friedlander, 401-2; Bobonich, 263-65), with reference to the old Plato’s pessimistic and less refined views on human psychology, especially if compared to the psychology of the *Republic* (Klosko, 200-1).

<sup>76</sup> Bury’s translation modified.

<sup>77</sup> The gentleness of the golden cord is also a symbol for the political fruits it bears, *sophrosynē* and *eleutheria*, which are the ideals of the Magnesian constitution. By the same token, the other two chords will



works metaphorically to signify the value of each cord in the psychological-ethical context;<sup>78</sup> the golden string is the best string and therefore the one which preferably should lead one's life. The golden cord symbolizes the action of calculation (*logismos*, 645a 1) in the human soul, whereas the other two chords represent the influence of pleasure and pain (644c 6-7). We can state therefore that the psychological structure at the basis of the *Laws* is such that it portrays the human being as the field of a battle among attracting forces, pleasure, pain and *logismos*.

Such psychology is the starting point for the ethical investigations of the *Laws*, which, in their turn, are at the basis of its philosophical understanding of the law. For what concerns the ethical aspects of the *Laws*, we find that the psychological elements listed above are the main<sup>79</sup> factors at play. If we may use the Hegelian distinction between morality and ethics,<sup>80</sup> we can say that, at the moral level, our actions are determined by the shadow cast on the future by pleasure and pain. The Athenian says that while both painful and pleasing expectations share one name, they can be distinguished respectively as fear, expectation of pain, and confidence, expectation of pleasure (644c 9-d 1). Beyond all these elements, however, (*epi pasi toutois*, 644d 1), there is *logismos* which establishes which of the two expectation is better and which is worse (644d 2). We see, then, that for what concerns the individual's choice of conduct there seem to be a

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lead to a tyrannical state of affairs, that is, to a stiff regime where there is no room for *eleutheria*. This was the case of the Persian regime as we said above.

<sup>78</sup> As it happens in *Rep.* III 415 a.

<sup>79</sup> In fact, they are not the sole elements to be considered in ethical investigations, geography and fate must be taken into account as well (IV, 709a 3-b 2)

<sup>80</sup> See, *Philosophy of Right* par. 106-ff. and 142-ff.

psychological material (what is perceived as good or bad), which is elaborated by calculation and becomes one's standard of action. Such a standard, then, may pass from the moral to the ethical level and becomes a common political dogma (*dogma poleis koinon*, 644d 3), that is a belief that is shared by the community as a whole (such is the case of the prohibition of incest, which we have mentioned above). At this point, belief may be ratified in the legal code and may become *nomos* (*ibid.*).

Now, we must take a step forward in our considerations about ethics and law and reflect on the fact that by virtue of law being relative to ethics, it seems that law may also be considered relativistic. Different ethical calculations will, when upheld as shared standards, give way to different laws.<sup>81</sup> In fact, while the philosophical structure of the formation and the nature of law is rather straightforward, with calculation playing a determining role in the evaluation of the expectation, we must also consider such a structure at work, so to speak and we must conceive that *logismos*, from time to time, may be miscalculation since it is influenced by the pull of fear or confidence.<sup>82</sup> This is why the Athenian says that the “leading-string needs helpers to ensure that the golden kind within us may vanquish the other kinds” (645a 1).

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<sup>81</sup> The field of economy offers in this case very clear examples. In cases when the expectations are clear and shared by everyone (the current economic recession) there might be different evaluation of such a situation which trigger different methods to approach the situation (socialist, Keynesian or capitalistic), which, in their turn open the possibility for the creation of different legal measures (collectivization of the means of production, increment in liquidity, tax breaks, etc.).

<sup>82</sup> As we have seen above *logismos* is not the highest point of the ethical structure, but that place is reserved to *nous*, which offers certain knowledge. The relativism of *logismos* will be solved only in book X, when the Athenian will link by analogy human *nous* and the divine *nous* of the cosmos. At that point *nous* will be *de iure* the criterion for *logismos* and for ethics as a whole.

There are two ways of influencing the private and public calculation of expectation and, with that, the laws: education and what the Athenian calls teatrocracy.<sup>83</sup>

Let us begin by analyzing education and the ways in which it influences law. Education, in the opinion of the Athenian is the device that the *nomothetēs* should employ in order to succeed in creating a city that it is at once free and wise, that is, a city whose constitution is the proportional mean between democracy and aristocracy. However, education is a very broad term and the Athenian feels the need to clarify what he has in mind when he talks about *paideia*.

Our description of education must not remain vague. For at present, when reproaching or approving a man's upbringing, we describe one man as educated and another as uneducated, though at times one may be uncommonly well educated in the trade of a peddler or a skipper, or some other similar occupation. But, as it seems, our present discourse is not taking the view that such is education: the education we speak of is training from childhood in virtue, which makes a man eager (*epithymeten*) and desirous of becoming a perfect citizen, understanding how both to rule and be ruled according to justice. This is the special form of nurture, to which, as I suppose, our present argument would confine the term "education"; whereas an upbringing which aims only at money-making or physical strength, or even some knowledge (*tina sophian*) devoid of reason (*nou*) and justice, it would term vulgar and illiberal and utterly unworthy of the name "education" (643d 6-44a 5).<sup>84</sup>

Education in the understanding of the Athenian is essentially moral education.<sup>85</sup> It must be imparted to children so that they might desire to become perfect citizens, that is,

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<sup>83</sup> Education and teatrocracy represent ethical influences on legislation under the rubric of moral education. We have seen above that the precedence of ethics over law has been detected also in the formation of a constitution, thanks to the *patrioi nomoi* (p. 25-26), and in the maintenance of its integrity, thanks to the *agrapha nomima* (p. 30).

<sup>84</sup> Bury's translation modified.

<sup>85</sup> Vocational training is not intended as education, it seems rather to be considered a skill that has not much to do with political stature. In this sense the Athenian is consistent with his theory and application of

they must understand how to rule and to be ruled according to justice. This notation must remind us of the principle of geometrical equality of which we have spoken above; according to the Athenian the perfect citizen is the one who is able to see differences in attitudes, characters and abilities, and can recognize who is the person best suited for a certain political assignment. As we have said above, this is already a sign of justice,<sup>86</sup> but above we said also that justice has a special completion as compared to the other virtues; justice is, in some sense, the contemporaneous work of the other virtues,<sup>87</sup> moderation, wisdom and courage. But justice is also, together with *nous*, the principle according to which *sophia* may be called properly education: only that knowledge whose content is based on virtue, that is justice as the application of all virtues, and intelligence, may be called education. If all other types of upbringing, which do not involve *nous* and *dike*, are said to be illiberal and vulgar, education, as intended by the Athenian will be *eleuthera* and *sophron*, that is to say that it will guarantee those elements, respectively, the democratic and the aristocratic, which constitute *philia*, the element that keeps a state together.

Now there are two areas of education, one that employs *mousikē* and it is concerned with the education of the young ones, the other which uses *pharmakon*, essentially wine-drinking, and is intended for adults. Let us begin by analyzing the education of the young. The *paideia* of the young is so fundamental for the well being of the *polis* that it must begin in the mother's womb (VII, 789a 4-5). It will continue in the

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the law; as we mentioned in part two the citizens of Magnesia are prohibited from working and they spend their whole time attending to their self-cultivation.

<sup>86</sup> See *Leg.* VI 757c 6.

<sup>87</sup> See *Leg.* I 631c 1-d 1.

early years of a child, when the *paideia* will be masked as *paizein*, playing games (I, 643b 4). “So, by means of their games (*dia ton paidion*), we should endeavor to turn the pleasures (*hedonas*) and desires (*epithymias*) of the children in the direction of that object which forms their ultimate goal”<sup>88</sup> (643c 6-8). We know that the “ultimate goal” of education is justice, that is, acting in every respect according to virtue, but what is interesting in this passage is the method by which early education is imparted. In this passage, as well as in the one mentioned above (643d 6-44a 5), education, in the first place, is not a matter of *logismos*,<sup>89</sup> but a question of *epithymiai*, basic desires that the human kind shares with animals. As partially revealed by this latest quotation, *epithymiai* are essentially pains and pleasures.

“[I]n the children the first childish sensations are pleasure and pain, and ...it is in these first that goodness (*aretē*) and badness (*kakia*) come to the soul; but as to wisdom and settled true opinions, a man is lucky if they come to him even in old age” (II, 653a 5-9). As pleasures and pains produce expectations, that is confidence and fear, with regards

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<sup>88</sup> Bury’s translation modified.

<sup>89</sup> Not to mention a matter of *nous*. In emphasizing that education is not, in the first place, a process involving reasoning we must consider two aspects. First we must disagree with those who see in this process a psychological conflict between reason and drives and who, consequentially, oppose Plato’s view on education on the ground that it is, essentially, repressive. Such criticism works much better in the ambit of the *Republic*, but does not hold in the *Laws*. In the psychological analysis of the *Politeia* (IV 435c-444a) the just person is the one whose tripartite soul is arranged in such a fashion that the rational part allied with *thymos*, the spirited part, dominates over the *epithymiai* and keeps them in check. In the *Laws* there is no mention of a tripartite soul, rather, as we have seen, the soul is described as the place where the claims of pleasure and pain take place and, subsequently, *logismos* decides which claim has to be dominant, but most importantly there is a subtler approach to the problem of education. The underlying idea behind the Athenian’s proposal to begin education with the cultivation of *epithymiai* is that there can be no pedagogic success in the conflict between rationality and drives. The reason for such a claim is not that *logismos* is weaker than *epithymiai*, but, more radically, that *logismos* is based on *epithymiai*. In this sense then morality, ethics and the laws will all depend upon desires. This last consideration brings us to the second point to highlight. There seem to be a parallelism in the *Laws* between the structure of the law and that of morality and ethics. As the former depends on an ambit that evades its sphere, namely the moral and ethical ambit, so does the second, since it depends on desires yet to be formed in order to create customs.

to the future, we may assume that sensations of pleasure and pain will produce desires on the basis of past experiences. If a child has found that riding a horse was a pleasing experience, she will have a desire for riding horses, in current English we say that a child loves to ride horses, if the experience was painful, she will dislike it, that is, she will hate riding horses. The relation between pleasure and pain on the one hand and moral excellence and badness on the other is rather straightforward: if pleasure agrees with *aretē* and pain is associated with *kakia*, then the education of the child will be sound and the child will, most likely, become a good citizen, however, if the relation inverted, the children will be reared in an immoral fashion and will become bad citizens, with the consequence that the whole legislative system will fail.<sup>90</sup> On the association of pleasure with *aretē* and *kakia* with pain can be established the work of *logos*, that is *logismos*, for evaluating what should and should not be done.

When pleasure and love, and pain and hatred, spring up rightly in the souls of those who are unable as yet to grasp a rational account; and when, after grasping the rational account, they agree (*symphonesosi*) with the rational account (*logon*) to have been rightly formed (*eithisthai*) thanks to fitting practices (*ethon*): - this consent (*symphonia*), viewed as a whole, is goodness (*aretē*), and the part of it that is rightly trained in respect of pleasures and pains, so as to have what ought to be hated [that is *kakia*], right from the beginning up to the very end, and to love what ought to be loved [that is *aretē*], - if you were to mark this part off in your definition and call it "education," you would be giving it, in my opinion, its right name (653b 2-c 4).<sup>91</sup>

Besides the primacy of drives over reason, which we have mentioned above, we must note in this passage the method which the *nomothetēs*, as educator, must employ in

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<sup>90</sup> The question about the criterion for pleasures that may be associated with virtue will be posited in a moment.

<sup>91</sup> Bury's translation modified. We must notice, with Des Places and Ferrari, that a similar idea is expressed in *Rep.* II 366c, III 401c-402. There too children should naturally hate what is morally reprehensible and love what is morally worthy, see Ferrari, *Platone Le Leggi* p. 164-5 note 3.

order to set children on the path of virtue. The lawgiver must form their habits (*ethizein*) in such a fashion that non-rational forces such as pleasure and pain conform with the *logos* according to which the education is imparted,<sup>92</sup> that is according to the *ēthos* that the lawgiver wants the children to maintain as citizens, so as to preserve the integrity of the laws. But the lawgiver forms the habits of the children according to the *logos* that is present to her mind; therefore, she creates a paradoxical situation in which, on the one hand, the one who is being educated cannot rely on calculation (*logismos*) for acquiring her habits, nor knows what is the rationale (*logos*) standing behind the habits that she is forming, but she only knows what she likes and dislikes. On the other hand, the educator has a plan (*logos*) and has calculated the habits she is helping to form, but cannot rely on the child's rationality in order to impart them.<sup>93</sup> The separation between rationality and

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<sup>92</sup> The problem of what this *logos* may be is a problem that concerns *nous* and the cosmology that upholds the *Laws*.

<sup>93</sup> The same paradox is reached at the level of the relationship between posited law and ethics. The formed character of the child will support the legislation of the *nomothetēs*, but the law of the legislator, which draws on a rational understanding of such character, establishes her education when she still cannot rationalize its outcome. This paradox is one of the most interesting insights of political theory produced by the Academia. Well before anyone had heard of biopolitics and of the contrast between *zoe* and *bios*, Plato and Aristotle addressed the problem of the regime's formation of citizens' character by means of inculcation of habits; that is, they addressed the problem of the relation between *ēthos* and *ethos*. John Burnet, in his introduction to the second book of Aristotle's *Nicomachean Ethics*, points at the political value of this relationship beautifully. Burnet suggests (68) to read in the progression of Platonic dialogues a gradual abandonment of the Socratic maxim according to which virtue is *only* rational and can be taught, and the development of a psychological conception which allows to ground the experience of (and the possibility to impart) virtue *also* in the realm of affections. According to Burnet, it is on the basis of these considerations that Plato says "the whole of *ēthos* is to be derived from *ethos*" (*Leg.* 792e; it is to be noted a typographical error in Burnet's text, which places this quotation at 729e, see Burnet, 74). This same consideration is expressed by Aristotle at the opening of book II of the *Nicomachean Ethics* "*ēthikē* is derived from *ethos*" (1103a 16) and it is explained in the *Eudemian Ethics* in the following way: "[*ēthos*], as even its name implies, has its growth from habit (*ethos*), and by our often moving in a certain way a habit not innate in us is finally trained to be operative in that way—let moral character (*ēthos*) then be defined as a quality of the spirit in accordance with governing reason that is capable of following the reason (*logos*)" (1220b). Now, Burnet's analysis of the beginning of *NE* II is interesting because, while it acknowledges that considering *ēthos* as the fruit of *ethos* means to distinguish between practical (goodness of character) and intellectual goodness, it also points out that building character by means of habits is the basis to establish a political regime: the regime prescribes a certain action (*ethos*) to its citizens, in order to

drives will be erased only when the two will be in harmony in the child. At that point, the moral education will have succeeded, with the child's acquisition of *aretē*. Then, the question now is, how does the *nomothetēs* create this harmony (*symphonia*)?

Not surprisingly, the Athenian employs a musical term to describe the agreement that there must be between the rational and the desiring part of the child's soul. It is in fact through music that the Athenian hopes to achieve the correct education of the young Magnesians. At the basis of such an attempt, there is the belief that music, that is lyrics, songs, musical compositions, dances, has a normative function. That is to say, music is seen as holding a middle position between the laws and the ethical sphere and, because of that, it may consolidate customs into laws and it may allow norms to delineate habits. In book VII, while establishing the law regarding public festivities, the Athenian says, "Let the strange fact be granted, we say that our chants (*odas*) are now made into laws (*nomoi*), just as the ancients, it would seem, gave this name [*nomoi*] to harp-tunes" (799e 10-12).<sup>94</sup> It is interesting here to consider the association of *nomos* as a kind of tune and *nomos* as law, but most importantly we must notice the middle position taken by the ode.<sup>95</sup> Let us keep the relevance of the ode in mind for a second and let us say something about the general plan of education that the Athenian suggests.

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build their character (*ēthos*) in compliance with the model of character that the regime holds as truly good. Here, then, is our paradox: a political regime must have a reasoned idea of the kind of character it wants its citizens to develop, but it cannot appeal to the citizens' rationality in order to form it; it must appeal to their affections. On the other hand, the health of the regime, and of all its rational laws, depends on the affective response of its citizens to this imposition of habits.

<sup>94</sup> Bury's translation modified.

<sup>95</sup> The pun on *nomos* comes back in the text several times, 700b, 722d, 734e, underscoring the fact that this is a conceptual pillar of the musical considerations of the Athenian.



Just as the lawgiver educates children by forming firstly their appetites and then the rational component of their soul, so, too, music, the vehicle of education, deals initially with the conditioning of the body and, at a second moment, with the musical upbringing of the soul. The opportunity to train the young bodies is offered by religious celebrations, especially those in honor of the Muses, Apollo and Dionysus (II, 653d 3-4).<sup>96</sup>

[A]lmost without exception every young creature is incapable of keeping either its body or its tongue quiet, and is always striving to move and to make sounds, leaping and skipping and delighting (*meth'hedones*) in dances and games, and uttering, also, noises of every description. Now, whereas all other creatures are devoid of any perception (*aisthesis*) of the various kind of order and disorder in movement (which we term rhythm and harmony) to us [human beings], the very gods, who were given, as we said, to be our fellows in the dance [the Muses, Apollo and Dionysus], have granted the pleasurable perception (*aisthesin meth'hedones*) of good rhythm and good harmony, whereby they cause us to move and to lead our choirs, linking us one with another by means of songs (*odais*) and dances (653e 7-54a 4).<sup>97</sup>

In the nature of every young living being, there is a drive to move; this drive acts according to the direction of pleasure. In the human being, this drive is accompanied by the perception of rhythm and harmony, which is in the first place perception of the pleasures given by rhythm and harmony. The assimilation of the pleasures naturally given by movement in every young creature with the pleasure given by orderly movement constitutes the mechanism by which the young human being can be educated. We must also clarify that in the musical process of education, the moral and the ethical standards offered by the process come at the same time. Musical education, which is

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<sup>96</sup> The Athenian goes against the common opinion held in Dionysus' regards (II, 672a 5-c 1).

<sup>97</sup> Bury's translation modified.

essentially the ability to sing and dance with the chorus, forms the movement of the single dancer while “linking” one dancer with the next, with the result of creating an *ēthos* shared, at least in regard to rhythm and harmony, by every dancer.

The results of this seemingly unorthodox educative process can be tested by comparison with the results that rocking has over the baby who cries.

Thus when mothers have children suffering from sleeplessness, and want to lull them to rest, the treatment they apply is to give them, not quiet, but motion, for they rock them constantly in their arms; and instead of silence, they use some kind of melody; and thus they literally cast a spell upon the children (like the victims of Bacchic frenzy) by employing the combined movements of dance (*koreia*) and song (*mouse*) as a remedy (VII, 790d 5-e 4).<sup>98</sup>

Just as rocking and humming enchant the newborn and calm her because of her natural tendency to motion, so, too, not only dance affect human beings thanks to our body’s natural tendency to movement, but also, exploiting such tendency, music casts a spell on our whole being, enchanting the rational part of our soul. The enchanting power of music is what allows for education to begin by exploiting the drives and work its way to the rational part of the soul. Also, the idea of charming someone by means of singing gives new meaning to the thought that musical education is something that is carried out in a social environment. With regards to dance, we have said that moral education and ethics developed at the same time because the dancers were all synchronized in their performance; here, with the idea of enchanting by means of music or singing, we find that such social connection is no longer carried out among peers, but describes a relation according to which someone is in a position of power, the enchanter, and someone is powerless, the enchanted. One should not hear solely and most clearly in this thought the

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<sup>98</sup> Bury’s translation modified. See also *Crito* 54d, for a Socrates enchanted by the laws.

captivating voice of Odysseus's sirens; enchanting is not always misleading. In our present case, enchanting stands for moral apprenticeship, which is at the basis of tradition, that is, a transmission of knowledge<sup>99</sup> from the previous to the next generation.

Education is the process of drawing and guiding children towards that principle which is pronounced right by the law and confirmed as truly right by the experience of the oldest and fairest. So in order that the soul of the child may not become habituated (*ethizetai*) to having pains and pleasures in contradiction to the law and those who put their trust in the law [the old person], but in conformity with these things, being pleased and pained at the same things as the old man. For these purposes we have what we call "chants," (*odas*) which evidently are actually enchantments (*epodai*), seriously designed to produce in souls that harmony (*symphonian*) of which we speak. But inasmuch as the souls of the young are unable to endure serious study, we term these "plays" and "chants" (659d 1-e 5).<sup>100</sup>

Once the ethical norms are crystallized into law, the ethical substratum must remain alive, even though elaborating continuously the same prescriptions, that is passing the same prescriptions to the soon-to-be citizens.<sup>101</sup> The *odai* are the means by which the educator and the legislator can create a correspondence between the drives and the rational part of the soul of the child, by appealing to the pleasures felt by the drives and organizing them into ethical precepts by means of a convincing song. But the Athenian foresees also the possibility that the child is educated, that is habituated, to seek pleasures that do not conform to those inspired by the ethical prescriptions that uphold legal norms.

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<sup>99</sup> Even criticism to tradition must begin with tradition. Lyotard saw that clearly when, in the seventies, in the midst of the political and cultural upheaval that shook France, wrote in his *Pagan Rudiments* that the three philosophical opposition to power, criticism, irony and humor, begin within the establishment.

<sup>100</sup> Bury's translation modified.

<sup>101</sup> Once again, it is worth remembering, this is the condition for the legal system to stay in place; if the stability of the law were not to be upheld by the constant renovation of ethical and moral norms, it would be dismantled by the power of its very foundation, ethics.

That the Athenian sees such a possibility as a real one must make us reflect further. We have seen above that law is relative to ethics, since if it goes against established ethical norms, it is bound to crumble; in that sense, law is relativistic. However, now it seems that ethics reveals its own instability. There can be a stable ethics, and with that stable law only if moral education keeps forming souls that find pleasure in the given ethical norms, but there is also a possibility that the drive for pleasure escapes the ethical enchantment. If this is the case, one must have a criterion to decide which pleasure is ethical, that is in compliance with the given ethical norms, and which unethical, so as to ensure the stability of ethics and, in turn, to make law stable. With an association typical of the philosophy of Plato,<sup>102</sup> the Athenian identifies the moral standard to be followed with the aesthetic standard and maintains that something aesthetically pleasurable must be such on the moral and ethical level. “[M]ovements and melody do exist in music ...the movements and the melodies of the soul and the body which are on the side of virtue (*arete*) ... are absolutely good movements and melodies, whereas those on the side of badness (*kakia*) are their exact opposite” (655a 5-b 6).<sup>103</sup>

However, while the inclusion of the aesthetical standard into the ethical may be a victorious strategy to assure the stability of the law,<sup>104</sup> a strategy “absolutely legislative and political” (657a 4), it is not sufficient, from the philosophical standpoint, to establish

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<sup>102</sup> And with the Greek and specifically Athenian ideal of *kalokagathia*. For a reference in the Platonic corpus let us recall the Socratic prescription of Dorian and Phrygian compositions for the guardians in *Rep.* III, 399a 1- c 3.

<sup>103</sup> My translation.

<sup>104</sup> That this is the chief goal of the Athenian can be understood by the praise he gives to the Egyptian system of musical and moral education, which remained stable for thousands of years (656d 5-57a 5). The reference to an empirical example of political and ethical stability is a sufficient reason to approve the identification of ethics and aesthetics.

a criterion for choosing the moral pleasure over the immoral pleasure. A first attempt to establish such a criterion is based on the Athenian's axiomatic equivalence of justice and pleasure. As we said above, in the *Laws*, justice seems to qualify as the joint strength of wholesomeness, wisdom and courage in action, therefore it may stand for *aretē*. In the course of discussing the status of music and musical education in Sparta and Crete, the Athenian makes the following claim, "What I assert is that what are called "evils" (*kaka*) are good for the unjust, but evil (*kaka*) for the just, while the so-called "goods" (*agatha*) are really good for the good, but bad for the bad" (661d 1-3). That the *agatha* are equivalent to pleasure is clear from a few lines above, where they are identified with a number of obviously pleasing things and, most importantly, with clear perception (we saw above that pleasure is *aisthesis*) and doing what one desires. On the surface, then, it seems that the Athenian is repeating the statement about *aretē* and pleasure in terms of justice as equivalent to pleasure; what is actually good is what is considered as such by the just person, whereas the unjust person enjoys only despicable things. But, at a deeper level, the Athenian is exploiting the equivalence of ethics and aesthetics so as to claim that only matter-of-fact painful things may be experienced by the unjust person because of her immorality: if a sound body is a good, the immoral person will only find pleasure in the sick body; if beholding beauty is good, then she will be pleased by ugliness. This implicit assumption becomes clear a few line below, when the Athenian attempts to convince his interlocutors that the life of an unjust person is in fact unpleasing (*aedos*) for that very person<sup>105</sup> (662a 7). His attempt does not succeed, but at least he manages to

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<sup>105</sup> This is the famous paradoxical moral maxim of Socrates.

convince Kleinias<sup>106</sup> and Megillus that the criterion that identifies good, beautiful and just with pleasing is valid and proved on the factual basis that people act voluntarily only if their action causes more joy than pain (663a 9-b 5).

A second attempt may prove more successful. In book V, the Athenian continues an imaginary speech to the citizens of Magnesia that he began in book IV: the speech covers a variety of topics and, at a point, speaks of the best life. At the outset, the Athenian summarizes the results established in book II,

Pleasures, pains and desires are by nature especially human; and from these, of necessity, every mortal creature is, so to say, suspended and dependent by the strongest cords of influence. Thus one should commend the noblest life (*kalliston bion*), not merely because it is of superior fashion in respect of fair repute, but also because, if a man consents to taste it and not shun it in his youth, it is superior likewise in that which all men covet, - an excess, namely, of joy and a deficiency of pain throughout the whole of life (732e 4-33a 4).

Recalling the image of the divine puppet, he states again that the major driving forces in a human being's life are pleasure and pain and then claims, identifying aesthetics and ethics, that the most beautiful life, which is also the most noble, it is the most pleasurable. Therefore, if, as it seems likely,<sup>107</sup> everyone seeks pleasure and flees pain, the noble life should be the most appealing to everyone. To prove his argument, the Athenian will try to establish what is the correct (*orthos*) life; "but wherein does this "rightness" (*orthotes*) consists? That is the question that we must now ...consider; comparing the more pleasant life with the more painful, we must in this wise consider

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<sup>106</sup> Kleinias voices his disagreement with the Athenian's reasoning (662a 8) and gives in to the Athenian only reluctantly (663d 5). The Athenian himself does not feel reassured by his own reasoning and claims that, even if unjustifiable, the legislator should lie about the immoral life being displeasing should for the sake of the young people.

<sup>107</sup> Plato seems never to take into account sadist or masochistic phenomena and lives. Perhaps such behaviors were not common in the fourth century b.C. and it took de Sade and von Sacher to invent them.

whether this mode is natural to us, and that other mode unnatural” (733a 5-8). The correctness of the lifestyle consists in its being in agreement with nature, the improper life instead is living against nature. If correctness is according to nature, nature is the diktat imposing on human beings to seek pleasure and avoid pain, it is a self evident state of affairs. The life that conforms to nature is, then, correct in the sense of being fitting, but also in a moral sense, it is the righteous life, since, as we saw above, the moral life must be pleasing. Once that the lifestyle corresponding to the inevitable course of things (733c 1-2) has been individuated, one must hold it as personal norm according to which living one’s life (733e 1); that is to say, what is so by nature is inevitably moral. This is the argument that grounds the Athenian’s thesis. Simply ruling that the moral life must also be the most beautiful and pleasing seems too arbitrary, but once he manages to ground such a statement in the matter-of-fact truth, then he can claim that those who find pleasure in lifestyles that are unnatural, do so because of ignorance, since, if they knew how things are in nature,<sup>108</sup> they could not refuse his claim (733d 4-6).

With such a strong foundation for his argument, the Athenian then moves on to state “that since the temperate life has its feelings smaller, fewer and lighter than the licentious life, and the wise life than the foolish, and the brave than the cowardly [even

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<sup>108</sup> In the *Laws* nature is nothing “natural” in the classic sense of the word, but it is the same as a moral organization of the universe. Therefore, when we read the word “nature” in the *Laws*, we have to bear in mind that on the one hand its norms are inescapable, but, on the other, that this norms are moral. The Athenian clarifies in book X the reason why the universe follows an intrinsic moral order. There, the opposition between *technē* and *physis* is resolved in favor of the former: everything that exists is the creation of a general soul and for such reason the whole world is regulated in a rational fashion and not randomly, as the average understanding of the word “nature” would suggest. It must also be considered that, in the *Laws*, the link between pleasure and morality makes much more sense, given this morally cosmological order, than, for instance, in the *Gorgias*. In the *Laws* cosmology justifies both the fact that human beings are naturally inclined to pursue pleasure and the fact that the ultimate pleasure is to be found in morality. In the *Gorgias*, the issue of the connection between pleasure and morality must be left undecided and Socrates can only resort to a mythical explanation in order to make his argument.

though the immoral lives allow for more intense sensations of pleasure as well as pain], and since the one life is superior to the other in pleasure, but inferior in pain ...the one set of lives ranks as more pleasant than the other” (734c 4-d 2).<sup>109</sup>

The superiority of pleasure of moral life might be proved on the theoretical level, but at the level of practice, that is, at the level of politics, such a criterion does not always play a determining role. What sets a regime on the moral or immoral path is education with regards to pleasure and pain and education may be moral as well as immoral, that is, it may or may not be focused on the greatest amount of pleasure that is to be found in virtuous life. Once the new citizens are formed according to either *ēthos*, they hardly consent to respect new laws that depart from their habits (VII, 802c 7-d 6); in the case of a moral education this statement stands as a warranty for the preservation of *sophrōsynē* and *eleutheria* in the regime, but in the case of a corrupted education it creates a problem for the regime which attempts to be virtuous.

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<sup>109</sup> This discussion about pleasure seems to take a more hedonistic turn than the one in *Rep.* IX 580d-588a. There the investigation on pleasure is much subtler given, in the first place, the refined psychological structure on which it is based, but it is also oriented towards ontology. There are real pleasures, which are the pleasures known by the rational part of the soul and there are unreal pleasures, that is pleasures that appear as such, but are in fact just the outcome of pain ceasing. The difference between the two discussions seems to relate to the fictional context of the two books. In *Republic* Socrates engages his interlocutor in a mental construction of the ideal city, whereas in the *Laws* the Athenian, the Spartan and the Cretan are discussing the creation of an actual city. Therefore, when the Athenian addresses the imaginary crowd in books IV and V his approach is persuasive rather than investigative. However, the absence of false pleasures in the *Laws* testifies also in favor of the relevance that pleasure has for the safeguarding of the legal institution. If the pleasure to which everyone is attracted are not tamed by moral education, they would cause the failure of such an education and consequently the falling of the legal system. Simply labeling those pleasure as false would disregard the material with which the educator needs to work in order to form moral habits in the children. It may seem, then, that Plato in the *Laws* softens his stand with regards to pleasure in order to tame the citizenry, but that is not entirely the case. What the discussion in the *Laws* reveals is that Plato, in this work, is a much finer pedagogian; he realizes that there can be no education without consensus on the part of those who are being educated and, for such reason, he decides to work in concert with all the range of pleasures characteristic of mankind, rather than repressing those which, at first glance, do not conform with the education he is promoting.



### **Standards of Virtuous Education: Education of the Adults.**

We must look now at the education of the adult population. A continuing education finds its reason to be in the need of correcting an immorally formative childhood and in the necessity to reinforce the moral education that has been imparted (II, 653c 7-9). There are two major spheres in which we may recognize devices that promote education in adulthood. The first context is specifically legal, and the pedagogic means is the institution of “preludes” to the laws, that is explanations of the legal decrees. The second is religious and celebratory, and is subdivided into two major areas, theater and symposia.

With the introduction of preludes “every law will consist of two parts – the statement of the rule or prohibition with the penalties involved for violating it, and the introductory preamble stating the good, individual and social, which the law is intended to secure and the reason why the citizens should conform to it” (Morrow, 553). The institution by the Athenian of preludes to the laws is a surprising invention<sup>110</sup> in contrast even with modern legal traditions based on Roman law, where the principle *ignorantia legis non excusat* is in force. With the institution of the preludes, the Athenian aims at spreading within the Magnesian population not only knowledge of the law, but also its comprehension. In this sense, this legal institution not only bypasses the problem of ignoring law, but it is an exquisitely pedagogical device. As the term itself suggests, the preludes to the laws allude to the theme of music. As the musical *nomos* must have a *prooimion*, so the law must have a prelude (IV, 722d 6-e 1). The relevance of the preludes in the legal system that the three old men are discussing is signaled by a

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<sup>110</sup> The Athenian himself is aware of the innovative character of this measure, see IV, 722e 2-4.

reference to the dramatic time of the *Laws*. Says the Athenian, “It was little more than dawn when we began talking about the laws, and now it is high noon, and here we are in this entrancing resting place; all the time we have been talking of nothing but laws, yet it is only recently that we have begun, as it seems, to utter laws, and what went before was all simply preludes to laws” (722c 7-d 2). Half a day, that is, almost four books of the *Laws* are exclusively a prelude of the real matter at stake. The whole discussion will go on for at least twice as much time, but to get to a clear view of the law (the high noon) one must undergo a long introduction, without which the laws would be only a list of prescriptions without any bonding strength.<sup>111</sup>

The preludes to the law find their theoretical place between custom to be imparted with education and proper law. “The explanation of the laws on the one hand persuading, on the other punishing with violence and justice those who do not undergo the persuasion of the customs, will render our city, with the concurrence of the gods, blessed and prosperous” (718b 2-5).<sup>112</sup> As we have seen above, education appeals to pleasure in order to impart customs and in that sense it is persuasive. On the opposite side of the spectrum we find punishment, according to law; punishment is the obtuse part of the law, the one exclusively concerned with application of sanctions.<sup>113</sup> Persuasion within the specific

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<sup>111</sup> Precisely there are two types of preludes, the technical legal device that precedes any law and the more general, meta-legal prelude (the first four books of the *Laws*) comparable to the preamble of a constitution. The first four books of the *Laws* discuss matters, such as pleasure, education and *philia*, that are essential for understanding the legal code delineated in the remainder of the work; this further proves the importance and the priority of those topics for there to be laws.

<sup>112</sup> Bury’s translation modified.

<sup>113</sup> The awareness that the law is a sort of Janus, with one face able to instruct, while the other is only employed to condemn, is already present in the early works of Plato and specifically in the *Apology*. Socrates, in his defense, addresses his accusers with these words, “You, however, have avoided my

legal realm, instead, finds its application in the preludes.<sup>114</sup> We said above that educating the adult population is chiefly a matter of *pharmakeia* and this is the case also for the education imparted with preludes. The Athenian opens the discussion about the preludes by example, comparing the good and the bad legislator to the free doctor and the slave doctor (720a 1-e 5).<sup>115</sup> The latter is properly a despot (720c 8), using his authority without any knowledge, whereas the former investigates the medical issue according to its nature,<sup>116</sup> shares his knowledge with the ill person and learns something new as well. The free doctor will only prescribe a remedy after he has convinced the patient of the goodness of the imparted measures.<sup>117</sup> Later on, in book IX 857b 9-e 6, the Athenian refers back to the example of the two doctors and claims that, if the slave doctor were to see the free doctor practicing, he would consider the latter to perform something that is

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company and were unwilling to instruct me, but you bring me here [in court], where the law requires one to bring those who are in need of punishment, not of instruction” (26 a).

<sup>114</sup> The Athenian believes that a mixture of violence and persuasion is the simplest and fastest device with which a leader of a city may change the current laws (711c 5-8), but that position is soon abandoned and the complex persuasion-violence is conferred exclusively to the law. Even though the Athenian recognizes as proper of the law to be coercive, it seems that there is a priority of persuasion over punishment. The fact that the persuasive prelude precedes the disciplinary sanction is an indication of the Athenian’s hope that knowledge of a law which stems from a correct moral standard will have no need for punishment. Also, that the preludes are actually part of the legal norm, and not just a nice but useless invention, becomes clear at 721b 4-5, where the law and the prelude about wedding is called double norm, whereas the sole sanction is called simple norm.

<sup>115</sup> Bobonich (105) rightly claim that the use of the adjective ‘free’ is what determines the good relation between doctor and patient or legislator and citizen. As we saw above *eleutheria* is an essential element for the kind of state that is being instituted in the *Laws*. In a state where the citizens are considered slaves of the legislators, citizens do not need to participate of legislation, not even they are required to understand the rationale behind it, whereas in the state of Magnesia understanding and approving of the law is an essential element of legislation.

<sup>116</sup> Here the meaning of nature is that of the *de facto* condition.

<sup>117</sup> We must clarify that the example of the two doctors must not be interpreted in such a way as to allow one to think that the Athenian considers every civil body fundamentally corrupted and in need of a legal cure. One must keep in mind that the teacher of gymnastic is also a figure quoted in this passage by the Athenian, he is the one who takes care of the person’s body (or the civil body) in such a way as to keep it healthy.

close to philosophizing<sup>118</sup> and would say “You fool ...you are not doctoring your patience, but educating him, as though what he wanted was to be made not a sound man, but a doctor” (857d 6-e 1).<sup>119</sup> A few lines below the Athenian claims that such would seem his intention with the preludes; he wants to educate the citizens, not regulate them.<sup>120</sup>

A second instance of education for adults is framed in the discussion about theater and lyric compositions. Both this section and the one concerned with symposia have as their central issue pleasure and refer to that sphere of education which is employed to form public opinion. The Athenian opens the conversation about lyric composition in book II, at 857a 4: the matter at stake is judging a play and, specifically, the problem is delineated in the following way. There are many genres of composition and each one of them causes pleasure in the audience, but for different pleasures, there are different sections of the public to which such pleasures are targeted. Children like puppet shows, young ones comedies, the majority of the audience prefers tragedies and elderly people

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<sup>118</sup> To my knowledge this is the only instance in the *Laws* when Plato uses a cognate of *philosophia*.

<sup>119</sup> Bury's translation modified.

<sup>120</sup> The example of the doctors is illuminating here and we must acknowledge with Bobonich (98) that Plato is employing the figure of the physician in a novel fashion, if compared with other dialogues. “[T]here Plato's point was that since the doctor, unlike the patience, knows what is best for the patience in the long run, he is justified in imposing on the patience, even by force, painful courses of treatment that the patient would reject. Here Plato uses the old analogy for quite different purposes” (Bobonich, *ibid.*). The new use of the figure of the doctor brings us to the question; what kind of doctor is the one who makes the patient a physician? That is to say, what kind of law is one that aims at making the citizen a legislator? It seems to me that such is only the law of education. In educating, the educator is not only offering knowledge to the person being schooled, but is also attempting to endow the learner with the ability to teach such knowledge. Or, better yet, in the process of education the student is encouraged to propose even alternative points of view on the matter at stake, as long as they are meant to increment knowledge, that is, education; the same is true for the institution of the preludes (X, 899c 6-d 1). In this sense one may have room to argue that the whole legal enterprise, in the depth of the Athenian's heart, should be a process of education for which there is no one who makes laws and no one who abides them, but rather each one is a lawmaker. In this sense we may read 875c 3-d5, where the Athenian says that there is no law or order superior to knowledge.

enjoy epic compositions, namely, the *Iliad* and *Odyssey*. To solve the problem, the Athenian refers to his identification of aesthetic and ethical ideal, “I should regard that Muse, who pleases the best men and the highly educated as about the best, and as quite the best if it pleases the one man who excels in virtue and education” (658e 8-59a 1).<sup>121</sup> The different representations must be judged differently, since they appeal to different pleasures, but within each hedonistic realm there is only one kind of pleasure, which identifies with the ethical ideal. Once again, the ethical ideal is the one imparted by education and the one which is at the basis of the legal system; in the present case, the Athenian is thinking of the just person, that is the one who performs according to moderation and practical wisdom accompanied by courage (659a 3). If a person endowed with virtue and correct education would judge a play, she would be a teacher to the spectators (659b 2-3), since she would, by means of proclaiming one play better than the other, offer a representational example to the spectators of the life that is lived and judged according to virtue and education. The Athenian then must be thinking of the whole field of literature as a pedagogical ambit, where the representation of customs that are better than the spectators’ gives the audience a better kind of pleasure (659c 3-4) and, therefore, has a chance to educate them morally.

Among the literary genres, one must consider also the role played by legislation. If any lyric form arouses pleasures, then legislation must too. As other genres do, also legislation is subjected to those standards (pleasure, beauty and goodness), which will decide whether it qualifies as a means for moral education. In the intentions of the

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<sup>121</sup> Bury’s translation modified.

Athenian, the aesthetic standard will match the exquisitely ethical content of legislation and will make the law as the best and most beautiful literary genre (IX, 858c 10-59a 1).<sup>122</sup>

Symposia, perhaps surprisingly, are another means for educating adults. The core of the discussion about symposia begins within the frame of the discussion about religious celebrations. As we have seen in part two of this essay, the Athenian claims that the divine references for those celebrations are the Muses, Apollo and Dionysus. Accordingly, he organizes the choruses that perform during the celebrations. The chorus of the Muses comes first and it composed by children and the second will be the chorus of Apollo the savior, they will sing the Paean,<sup>123</sup> the age limit for this chorus is thirty years. A third group will be dedicated to Dionysus, composed by members between thirty-one and sixty years of age. The elderly over sixty years will not sing, but rather tell stories about customs, inspired by the gods. The general goal of the choruses is to educate the whole population according to the principle mentioned in part three of this essay, for which a chant is also an enchantment. "It is the duty of every man and child, free person and slave, male and female and the duty of the whole State to enchant themselves

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<sup>122</sup> With an opposition of literary figures, the Athenian says that it is much more important for Solon to write precisely and beautifully about life and its activity than for Homer (858e 1-4). However, reflecting on the writing style of the *Laws*, Friedlander claims that there are two literary forces at work in the *Laws*; the Socratic, the one devoted to philosophical investigation and employed for discussing the most important matters, and the Solonian, which, with plain language, treats the simpler parts of the *Laws* (432). Friedlander believes that, in the end, the Socratic style overcomes the Solonian and plays the final note of the literary composition of the *Laws* (444). Regardless of this conclusion, Friedlander gives us a lead to reflect on the kind of Solon that Plato has in mind when claiming that the legislative must be the ruling literary genre. It is hard to think of today's legislation as a piece of moving literature (unless we have in mind certain passages from the preambles of constitutions), whereas, the law, as intended by the Athenian, especially because of the institution of the preludes, is investigative and enjoyable to read. More interestingly, however, is the fact that there is actually a Socratic hue in the laws proposed by the Athenian, which is exemplified, in the first place, by their persuading power.

<sup>123</sup> With Ferrari (200-01, n. 29) we must notice that the connection between music and the saving power of Paion Apollo, the god who cures, reinforces the idea of the formative power of music in the realm of education.

unceasingly with the chants we have described” (II, 665c 2-5).<sup>124</sup> This instance of enchantment is different from the one we observed above; when enchanting the soul of the children the educator is, so to speak, in control of the process of persuasion, whereas in the present case the Athenian seems to have in mind something similar to self-hypnosis. With the singing of the choruses the whole population will reinforce their ethical beliefs and, with that, they will strengthen the bond of law.<sup>125</sup> The different choruses will have different functions (664c 5-d 1). The Muses’ will state the ethical norms to the whole population, Apollo’s will grant the truthfulness of such norms and will give them persuasive power, Dionysus’ finally will have a peculiar task,<sup>126</sup> which introduces us to the discussion about symposia and consumption of wine.

A few lines below the passage just cited, the Athenian seems to change his mind and states that the place where the chorus of Dionysus must perform is not a theater, but the location where the common meals are held.<sup>127</sup> With the help of the Dionysian gift of

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<sup>124</sup> Bury’s translation modified.

<sup>125</sup> One must not imagine a population of automatons repeating unceasingly an ethical mantra. In the first place, the context in which the choruses perform is that of a festivity and, secondly, the principle according to which the technique of chanting-enchanting functions is such that requires pleasure, not repetition. The Athenian makes the point that, with regards to the chorus’ songs one must “secure variety in every way possible, so as to inspire the singers with an insatiable appetite for hymns and with pleasure therein” (665c 5-7).

<sup>126</sup> Since Nietzsche’s *Birth of Tragedy*, Dionysus cannot be considered in philosophy as the teacher of a terrible, Silean wisdom: one that kills, or demands death, if approximated too closely, but one that is nonetheless most truthful. Colli synthesizes Dionysian wisdom saying that, because of it, life itself appears as wisdom, while, nonetheless, remaining throbbing life (15). Colli shows how Dionysian wisdom is expressed in the religion of the mysteries (28-ff.) and in poetry, thanks to Orpheus (37-ff.). These themes appear in the *Laws* once again under the auspices of Dionysus. As we shall see briefly, the use of wine facilitates in Magnesia religious celebrations that are carried out by means of poetry. In these celebrations the ultimate moral truths, the truths about the life in Magnesia are revealed and revered by its citizens.

<sup>127</sup> The word employed by the Athenian here is not *symposia*, but *syssitios*. We know from the opening of book I (625c 6-ff.) that these were the common meals that originated as a military practice and were

wine, the older members of the third chorus will find the strength and the enthusiasm for singing and persuading (666c 2-6). The Athenian calls the wine a *pharmakon*<sup>128</sup> (666b 6) and we can see that there are three educational goals achieved thanks to it.

In the first place, wine is for the elderly a device for self-medication. Under the guidance of Dionysus, wine is the threshold to perfection, that is an initiation (*telete*), and a game (*paidia*) (666b 4-5), “so that we [the elderly] are young again and, forgetting our lack of vigor, the habits (*ethos*) of our soul become, from sclerotic, soft, just as iron softens when put in fire, becoming, in this way, well malleable” (666b 6-c 3).<sup>129</sup> This is not only a remarkable description of the effects that wine has on one’s consciousness, but it also explains what is the last stage of the ethical preparation proposed by the Athenian.

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institutionalized in Crete and Sparta. The Athenian is then innovating this practice so as to be fitted not only for military education, but also for moral upbringing.

<sup>128</sup> When speaking of *pharmakon* in Plato one cannot forget to mention Derrida’s *Plato’s Pharmacy*. Even though the focus of Derrida’s work is on the anesthetic role that Platonic philosophy plays with regards to a constellation of concepts (death, sophistry, writing, etc.) in the *Phaedrus*, part of Derrida’s analysis can be applied to the use of wine in the *Laws*. Derrida quotes the *Laws* at the beginning of the second part of the essay (120) to introduce the reader to the “nature” of the *pharmakon* which is at once venom and medicine. However, the *pharmakon* is not the synthesis of those opposites, but rather their origin, “[I]t is ... the prior medium in which differentiation in general is produced” (126). Given this status of the *pharmakon*, each single instance coming from it can be used as a counteragent of a previous agent that has been administered. In the specific case of Plato, Derrida uses this system of oppositions to explain the preference, in Platonic dialogues, of oral tradition over writing, philosophy over sophistry, life over death. Derrida affirms (127) that the play of opposites is stopped by Plato and that, consequently, Plato attempts to exhaust the reserve of potency of the *pharmakon*. To be fair, Derrida recognizes that “Plato thought about and even formulated this ambivalence” (126), but he dismisses it immediately as a something that happened incidentally. I am not convinced that this is always the case with Plato and I think that the example of the use of wine can be illuminating in this regard. What is interesting in the Derridean analysis of *pharmakon* is that Derrida posits the oppositions which generate from the *pharmakon* as aporetic or irresolvable: in order to obtain one of the effects of the *pharmakon*, the other must be held as well. Under this light, the use of wine in the *Laws* corresponds to Derrida’s analysis of the *pharmakon*. Wine, as it is should be used by the elderly of Magnesia, is at the same time a medicine which cures minor lacks in moral education and a venom that dissolves the education received. Specifically it is helpful for moral education only because it dissolves moral notions that have been acquired and sclerosed. This portray of wine, then, is not a Platonic attempt to crystallize the play of opposites of the *pharmakon*, but actually employs it in all its irresolvable contradiction.

<sup>129</sup> My translation. Presumably, when drunk the group that ranges between thirty-one and sixty years of age will also listen to the stories of the over-sixty years old men.



The elderly represent the highest point of moral education; they are those who guide and contribute to the education of the whole community. Since they are the depositaries of the moral norms that uphold the whole legal system, it comes as unexpected that they, too, could take further steps in moral development and, in fact, they do not. The drunk old person does not advance on the ethical path, but rather runs it anew: the wine dissolves the moral notions acquired so that they can be learned again and in this process morality is kept alive. By pointing at the (drunk) elderly as the highest point of education, the Athenian is suggesting to his interlocutors that the norms upholding society must not only be highly regarded and respected, but must be also maintained active. In fact, he reproaches them for precisely this reason: the Cretan and the Spartan do respect the norms of their fathers, by they are ignorant of them, that is, they preserve a sclerotic version of such norms, while in order to be active, the norms need to be lived and alive (666d 8-10). In other words, we could say that wine allows the elderly to feel again the pleasures given by the habits they acquired, that is why by law “no children under eighteen may touch wine at all, [since] it is wrong to pour fire on fire” (666a 4-6).

The second way in which the *pharmakon* wine (I, 649a 3; a 8) has a didactic purpose is relative to causing shame. This discussion stems from the context of the reflections about courage carried out in book I. The Athenian claims that as it is important to have courage with regards to painful things, so it is crucial to have shame with regards to pleasures (646e 10-47c 1). Wine, in this case, is considered a vaccine for the latter case. In the first place wine allows one to reveal one’s character for what actually is (649d 4-50b 4) and secondly wine makes the adults’ soul malleable, as we just said, giving a chance to the educator to form it (II, 671b 8-d 3). There will be sober

members at the symposia so that those who are shameless and exceed in their behavior may be led again to respect the ethical norms with which they have been educated. In this sense the symposia reinforce the cohesion of the social body (671e 5-72a 3) by bonding everyone with common ethical norms.

Finally, we get to the proper choral function of drinking wine. The elderly find courage to carry out their singing duties only once drunk (666c 3-6). So, after the children state the ethical norms, after the adults vouch for their truthfulness and persuasive power, the elderly will sing so as to set in action the enchanting power of such norms. We said above that enchanting is a way to educate the soul, in this sense then enchanting is a teaching. Since, especially in the case of the Dionysian chorus, it is a moral teaching through music, we must find a criterion to which such teaching appeals, a subject matter, which conforms also with beauty and goodness. In this case, justice cannot be our criterion, since, as we said, in the *Laws* justice is the whole of virtue in action; here, instead, we are looking for a knowledge that, even though vaguely, may be communicated and understood intellectually.

The discussion about such knowledge comes in book III, at 689a, in a context that is somewhat related to the discussion about the Dionysian chorus. The three old men are talking about the moral education of the Persian leaders and how the deficiency in their upbringing caused their whole empire to fail. Even though the context differs, the themes discussed, education and its relation to pleasure and pain, are the same. The discussion opens with the question, “What kind of ignorance (*amathia*) would deserved to be called the greatest?” and goes on answering “that which we see in the human who hates, instead of loving, what he judges to be beautiful (*kalon*) and good (*agathon*), while he loves and

cherishes what he judges to be evil and unjust. The disharmony (*diaphonian*), on the part of the feelings of pain and pleasure, with the rational judgment (*doxa kata logon*) is, I maintain, the extreme form of ignorance (*amatian*)” (689a 1-8).<sup>130</sup> This answer references topics that are common to our discussion (the musical reference (*diaphonian*) about the lack of schooling (*amathia*), which causes lack of synchrony between drives and rationally accepted pleasures), but also moves a step forward, implying that the correspondence of beauty, goodness and pleasure can be taught. The Athenian opposes to this form of *amathia* wisdom, *phronesis*. He claims that harmony (*symphonia*) is an essential component of wisdom, without which not even the smallest form of *phronesis* could be possible (III, 689d 5). The harmony inherent to wisdom is accomplished in living *kata logon* (689d 7), that is, in actualizing virtue, in living justly.

With the harmony of wisdom in mind, let us go back to our discussion about the intellectual content of the knowledge of the Dionysian chorus, which may be communicated and taught. The first step taken by the Athenian in order to find a teachable intellectual correspondence between sensible and intellectual pleasures is to neutralize the effects of the former when it comes to judge the moral soundness of choral music. Choral music is judged according to two standards, the sensible pleasure it conveys to the listeners and its utility, *ophelia* (II, 667b 5-8). Utility, in the context of choral music, is defined against the utility present in learning and in art in general, when

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<sup>130</sup> Bury’s translation modified. This lack of homogeneity between sensible and intellectual pleasures is one of the main concerns of Platonic philosophy; this psychological situation is usually epitomized with the sentence “being of two minds” (VII letter 328 b). Aristotle will discuss this same problem, in a context that does not take into account musical moral teaching, in book VII of the *Nicomachean Ethics*, under the label of *akrasia*. The term *symphonia* is also used in *Republic* IV 430e 3-4 to describe *sophrosynē*. In that case Lozza (note 19, p. 309) notes how in the ancient theory of music the term *symphonia* was used to indicated the correspondence between the octave and the double octave; in this sense then, the term *symphonia* has a technical meaning for Platonic ethics and ethical psychology, denoting a consonance between two different levels, that of the drives and that of the intellect.

art is understood as mimetic production (667c 5-d 7). These two references to *ophelia* are particularly useful for the discussion of choral music as proposed by the Athenian; on the one hand, the performance of the chorus is the one of the highest moments of ethical education, as we have stated repeatedly, while on the other hand, singing, dancing and instrument playing are essentially artistic forms. The utility<sup>131</sup> of learning comes from truth, while the utility of art comes from realizing its model. Together with these two forms of utility (utility of the learning process and artistic utility), we must consider also pleasure; specifically the pleasure experienced in the learning process and the pleasure caused by imitation. The relation between pleasure and utility, in either case, is such that the former is a byproduct of the latter: there is pleasure in learning, only when the function of learning, attaining the truth, is realized; there is pleasure in art only when its imitation is a close resemblance of the original. Finally, we must consider that the correspondence between pleasure and truth or pleasure and utility is the same as the correspondence between sensible and intellectual pleasure. On these bases, we may dismiss simple pleasure, that is pleasure without association with utility or truth, as a

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<sup>131</sup> In this context utility ( *ophelia*) must be understood in a broad sense, in the sense of function. As a comparison one could take Heidegger's description of handiness (*Being and Time* § 15, 16). According to Heidegger, when we relate to the beings in the world according to their handiness, we relate to them non-thematically, that is, without considering them as objects present before us, on the contrary, we simply use them. This non-thematic relation with the things that surround us inscribes us in the network of relations that is our world. *Ophelia*, when we speak of education and mimetic art, is similar to handiness in the fact that it relates us immediately to the truth of the *mimesis*. We do not conceive of the spectacle in front of us as something that is alien to us, but we believe it, we relate to it immediately, because we see its truthfulness through its *mimesis*. On the theme of *ophelia* and pleasure Cairns (p. 367) equates Plato to Bentham and proposes to look at the former as anticipating the latter's principle of utility. To such an analogy must be answered that Plato is actually very much unlike Bentham. That this is the case is shown by the fact that pleasure is for Plato a means to arrive at the end of virtue. As we see with the case of the Dionysian chorus the pleasure of affections on which the moral education of the young is carried out, is dismissed in light of another pleasure, one that is more intellectual and that stems from the chorus' mimetic proximity to truth. Also, it is unlikely that Plato would buy into a theory for the maximization of happiness (such a theory would result for instance in an approval of Socrates' condemnation to death as it is better to kill a man if that makes the whole city happy), since his moral theory is based largely on the discrimination of pleasures.

criterion for judging things that are useful or disadvantageous (667d 9-e 4). This pleasure is essentially a joke, a play of children (*paidia*, 667e 6-7) and is not to be considered for judging the knowledge transmitted by the Dionysian chorus, since this knowledge, being an intellectual content, can be judged only on an intellectual and not on a sensible basis.

The second step taken by the Athenian to describe the intellectual content of the correspondence between sensible and intellectual pleasure is to discuss utility. With regards to art, utility is both, truth and imitation of that which is beautiful (668a 3-4; b 1-2). In this sense, the music of the Dionysian chorus will enchant not only by means of sensible pleasure (pleasing words, rhythm, harmony, melody), but also thanks to a very close imitation of that which is beautiful and true, that is, the ethical ideal. This imitation may be considered knowledge since, being always in reference to the essence of the thing that is imitated (668c 4-8), conveys the truth of such a thing through its specific media, music, dance and singing. These media (which convey sensible pleasure) will in their turn generate intellectual pleasure because of the very correspondence of their imitation to truth. The chorus of the elderly then resolves all problems of *symphonia* by generating a sensible pleasure that harmonizes with the intellectual achievement and, because of this correspondence, the ethical teachings of the Dionysian chorus are a form of *phronesis*. Utility, as correspondence to truth, is, then, the intellectual content that the songs of the elderly will communicate to the rest of the city. Their educational songs will succeed in their purpose if, through them, one will be able to know the original imitated, know the correctness of the imitation and see how well the dances, the rhythms and the words were employed for such a purpose. In turn, the chorus of Dionysus' performance will be judged according to these same standards (669a 7-b 3).

### **Anti-ethical Standards: Theatrocracy.**

The analysis of the Dionysian chorus brings us to consider the role of music politically, that is, in its formative power with regards to public opinion. The word “music” in this context does not simply stand for the fact of playing or hearing a melody, but encompasses a semantic field that is much wider, including public entertainment and cultural preservation or change. In this sense, the music of the Dionysian chorus influences the foundation of the ethical system on which the *polis* organizes its legislative system. A change in music is, then, a change in the culture that educates the *polis* and a new education may cause the whole political system to shift. The Athenian speaks at length of festivities and choral performances as means to consolidate and rejuvenate the ethical system at the basis of the *polis*, but he also mentions one important cultural-political case which may cause a shift at the ethical level of society, theatrocracy (III, 701a 3).

The fact that there is a double instance of pleasure that plays a role in moral education through music, as *paidia* (sensible pleasure), and as the result of utility (intellectual pleasure), allows considering pleasure in two different situations: in relation to its outcome (the truth of imitation) or as independent from consequences (sensible pleasure). The latter case stands for the fact that one can enjoy oneself regardless of moral or ethical repercussions. In the case of theatrocracy, we have a sensible pleasure which, at first, seems to be related to utility (that is to yielding intellectual pleasure), but that, actually, takes over as the exclusive criterion to judge theatrical productions. The musical standard of theatrocracy is, therefore, the direct opposite of the one employed by the Dionysian chorus: here sensible pleasure, there utility. Let us look first at the

conditions allowing theater to redirect the aesthetic-ethical standard of the Dionysian chorus and then let us look at the social dynamic that stems from it.

As we mentioned, the aesthetic standard of teatrocracy is exclusively hedonistic, “most people ... assert that the power of music consists in its power of affording pleasure to the soul” (655d 1-2). If pleasure is the only standard for appreciating music, music will assume a relativistic character: each person will prefer the kind of music that is closer to one’s disposition, the one that arouses one’s pleasure (655d 5-56a 5). Teatrocratic music, then, enchants differently from the way in which the songs of the Dionysian chorus do: the difference in enchantment is rooted in the difference that runs between a member of the chorus and a common poet. In both cases, however, it must be borne in mind that music preserves its educational vocation, in terms of its potential reference to a true model, since instances of artistic production come always in the form of *mimesis*. However, poets are not schooled, as the city’s educators must, in the educational potentials of mimetic art; all their work is done only by means of harmony and rhythm (670e 4-71a 1). The poet’s ability as composer hides the fact that his lyric imitations lack an original referent. Nonetheless, the poet must employ the potential for imitation of the artistic material, but he can do so solely with regards to the one criterion of composition that is available to him, sensible pleasure; the only reason for a poet to choose a certain meter and certain words is the sensible taste of his audience, who become, in turn, the only judges of the poet’s composition. The imitations of the poets are just silhouettes of the ones employed by the Magnesian elderly, since a reference to the truth is lacking. Consequently, the “direction” of poetic compositions differs from the compositions of the Dionysian chorus as well: while choral imitations point the spectator towards the truth of

the object that they represent, in the work of the poets imitations point back at the spectators, since the audience's reaction (their sensible pleasure or displeasure) is their only referent. Since the identification of ethical and aesthetic ideals and their reference to truthful models as the criteria for moral education are not concerns of the teatrocratic poet, then we must assume that teatrocracy means proliferation of ignorance, in terms of an abandonment of the research and transmission of truth, and dismissal of ethical standards.

The emphasis, which the artistic productions of teatrocracy put on the audience, sets up a social dynamic which one may call "populism" (701a 3-b 3). Populism in the artistic sphere has the virtue of becoming self sustaining: the criterion for theatrical production rests on the sensible excitement of the public, that is on being popular; popularity forces the poet to take into account the requests of the public, that is what the public believes would be sensibly pleasing; the public, in its turn, is educated by the poet to be the social focal point around which the cultural life of the polis revolves. This last step reinforces populism as the dynamic of culture, confirming that the criterion of an artistic production is whatever pleases (at the sensible level) the public. Once this dynamic is set, it takes very little effort for the cultural sphere to invade the ethical and finally, the legal. The Athenian informs us that the acclamation of the public was the norm (*nomos*) for the victory of poetic *agones* in Sicily and Italy<sup>132</sup> (659b 2-c 7) and

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<sup>132</sup> Italians have never abandoned this ideal of teatrocracy and its populist social dynamic. The last fifteen years of cultural and political decadence, embodied in Italy's primer minister Silvio Berlusconi, are an exquisite example of such dynamic. An interesting, yet weak, documentary by E. Gandini titled (very appropriately) *Videocracy* traces, in the history of Italian television culture, the reasons for the political inaptitude of Italian citizenry and Berlusconi's rise to power. Also one must recall (with an inevitable grin) at least two appearances of premier Berlusconi, which exemplify perfectly the model on which teatrocracy is constituted. In the first place let us recall one of the slogans with which he won the 2001 parliamentary elections. "Un presidente operaio" (a working class president) were the words that accompanied his smiley



recalls how (701a 3-c 4), in his home state, this dynamic began in the theaters and invaded political life. The ethical and political risk of teatrocracy is the self-referential status to which the public arrives. When this self-reference is set in place all the other references (laws, ethical foundation of the state, truth, moral order of the universe) are dismissed; the most obvious consequence of the self-referential character of teatrocracy is the atomization of the social body. This atomization may affect those elements that, in the former sections of this essay, we indicated as determinant for the ethical foundation of a state. In the first place we must think that the criterion of a proportion between freedom and *sophrosyne* is dismissed and that the ethical foundation of legislation is upset in favor of *eleutheria*.<sup>133</sup> This shift means the abandonment of geometrical proportion and the acquisition of arithmetical proportion: the opinion of each citizen, in judging a theatrical production, counts as much as that of every other, since there is no standard to compare their respective feelings of pleasure or displeasure; these feelings become interchangeable units of a series. Consequently, if no citizen differs with regards to a standard such as virtue, the less virtuous citizens must no longer experience a feeling

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face on an innumerable amount of billboards and magazines' pages. Now there would be nothing wrong in calling oneself a working class president, if the truthful model of a working class person is respected by the 'imitation' Berlusconi. However, the problem here is not only that Berlusconi is, according to Forbes, the 70<sup>th</sup> richest man in the world, which disproves him *de facto*, but also that the message of his campaign was meant to appeal to working class families not on the grounds that they might find pleasure in the correspondence of Berlusconi's face and their knowledge of a working class life, but in the message 'I, too, am one of you,' which aims at pleasing them and leaves no place for a truthful referent of 'working class president.' The same situation has reoccurred several times over the years and lately as well, with the recent scandal of prostitution that affects the Italian first citizen. Berlusconi has denied any wrongdoings, but has also remarked that he is "not a saint." What does it mean to tell your electorate (audience?) that one is not a saint? Is Berlusconi stating a (rather patent) truism in the form 'I am not a truthful imitation of sanctity' so as to get his audience to experience pleasure because of the truthfulness of his imitation? Or is he rather disregarding imitation, so as to aim directly at the sensible pleasure of his electorate stating something of the sort 'I am just like you' or 'you would have done the same if you were in my shoes.'

<sup>133</sup> Plato discusses the problem of teatrocracy exactly with regards to a mean between despotism and excessive freedom (701e).

of shame and awe for older and wiser citizens. This, in turn, means that justice, in the sense of knowing who is best suited for leading the *polis*, has disappeared from the social context. Ultimately, the chief consequence of the abandonment of justice at the social level is the weakening of *philia* as social glue and the creation of the conditions for *stasis*, the tangible sign of a theatrocratic and atomized society.

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